Request Conditions and General Conditions of Contract

August 2017
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PART A – REQUEST CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions Generally

In the Request:

**Addendum** means any addendum issued by the Contract Authority or the Customer in relation to the Request and which is available at Tenders WA [www.tenders.wa.gov.au].

**Closing Time** means the time and date specified on the front of the Request as the closing time for the submission of Offers.

**Contract** means either:

(a) the head agreement between the Contract Authority and the successful Respondent, the terms and conditions of which are contained in the Head Agreement Documents; or

(b) the customer contract between the Customer and the successful Respondent for the supply of the Products and/or Services by the successful Respondent, the terms and conditions of which are contained in the Customer Contract Documents,

as the context requires.

**General Conditions** mean Part B of this document.

**Offer** means the offer submitted by the Respondent in response to the Request.

**Offer Information** means all information, other than the Respondent’s Offer, submitted by the Respondent in response to, or in connection with, the Request.

**Offer Validity Period** means the period specified in clause 1.3 of Section 1 in Part A. of the Request.

**Offered Price** means the price, or the price determined by applying the formula or method, specified in the Offer.

**Products** means goods for the purposes of any State Supply Commission policy.

**Respondent** means any person who submits an Offer.

**Request Conditions** means this Part A.

**Section** means a section of the Request.

**State Supply Commission** means the State Supply Commission established under the State Supply Commission Act (WA) 1991.

1.2 Interpretation

In the Request and these Request Conditions:

- words defined in the General Conditions also apply to these Request Conditions; and

- unless the context otherwise requires:

(a) the singular includes the plural and vice versa;
(b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

(c) a reference to a gender includes other genders;

(d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;

(e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

(f) if the Respondent consists of a partnership or joint venture, then:
   (i) an obligation imposed on the Respondent under the Request binds each person who comprises the Respondent jointly and severally;
   (ii) each person who comprises the Respondent agrees to do all things necessary to enable the obligations imposed on the Respondent under the Request to be undertaken; and
   (iii) the act of one person who comprises the Respondent binds the other persons who comprise the Respondent;

(g) an agreement, representation or warranty on the part of or in favour of two (2) or more persons binds, or is for the benefit of, them jointly and severally;

(h) a reference to the Request or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Contract Authority, the Customer or the Respondent;

(i) a reference to a clause, schedule, attachment or appendix is a reference to a clause, schedule, attachment or appendix to the Request;

(j) all the provisions in any schedule, attachment or appendix to the Request are incorporated in, and form part of, the Request and bind the Contract Authority, the Customer and the Respondent;

(k) headings are included for convenience and do not affect the interpretation of the Request;

(l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;

(m) no rule of interpretation is to be applied to disadvantage the Contract Authority, the Customer or the Respondent on the basis that it was responsible for preparing the Request;

(n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

(o) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;

(p) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;

(q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;
(r) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;
(s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;
(t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;
(u) a reference to a monetary amount means that amount in Australian currency, and
(v) a reference to time means the time observed by the general community from time to time in Western Australia.

2. CONDITIONS

2.1 Submission of Offer

Any Offer which:
(a) is not submitted before the Closing Time;
(b) is incomplete at the Closing Time; or
(c) is not submitted in accordance with the provisions of clause 1.2 in Part A of the Request,

will be excluded from consideration, unless the Respondent can provide conclusive evidence of mishandling of the Offer.

For the purposes of the Request, mishandling will only have occurred where:
(a) in the case of submission of the Offer by hand or by post, the Offer was received by the Contract Authority or Customer prior to the Closing Time but the Offer was not transferred by the Contract Authority or Customer to the tender box by the Closing Time; or
(b) in the case of submission of the Offer by facsimile, the Offer was received by the Contract Authority or Customer prior to the Closing Time but the Offer was not transferred by the Contract Authority or Customer to the tender box by the Closing Time.

If the Respondent submits the Offer by facsimile, then the Offer must be received in full by the Contract Authority or Customer prior to the Closing Time. If the Respondent submits the Offer by facsimile, the Respondent agrees that:
(a) receipt of the Offer will be determined by the date and time which the Contract Authority’s or Customer’s facsimile machine records that the facsimile was successfully received; and
(b) facsimile transmission is not a reliable method of submitting Offers and the Respondent submits the Offer entirely at its own risk in respect of transmission failures and transmission errors howsoever caused.

If the Respondent submits the Offer electronically, then the Respondent must ensure that the electronic copy of the Offer is in one of the following file format and extensions:

..doc/docx*  .pub*  .pdf#  .txt  .rtf  .ppt/pptx  .xls/xlsx*

* Microsoft Compatible
The Offer must be received in full by the Contract Authority or Customer prior to the Closing Time. If the Respondent submits the Offer electronically, the Respondent agrees that:

(a) receipt of the Offer will be determined by the date and time shown on the electronic tender lodgement service receipt issued or, if no receipt is issued, the date and time which the Contract Authority’s or Customer’s computer records that the Offer was received;

(b) if the electronic copy of the Offer contains a virus then, notwithstanding any disclaimer made by the Respondent in respect of viruses, the Respondent must pay to the Contract Authority or Customer all costs incurred by the Contract Authority or the Customer arising from, or in connection with, the virus;

(c) lodgement of electronic files may take time and the Respondent must make its own assessment of the time required for full transmission of its Offer;

(d) neither the Contract Authority nor the Customer will be responsible in any way for any loss, damage or corruption of the electronic copy of the Offer;

(e) if the electronic copy of the Offer becomes corrupted, illegible or incomplete as a result of transmission, storage, encryption or decryption, then the Contract Authority or Customer may request the Respondent to provide another copy of the Offer either electronically or in hard copy or both;

(f) if the Contract Authority or Customer requests the provision of another copy of the Offer, then the Respondent must;

   (i) provide the copy in the form or forms requested within the period specified by the Contract Authority or Customer;

   (ii) provide a statutory declaration that the copy is a true copy of the Offer which was electronically submitted by the Respondent and that no changes to the Offer have been made after the initial attempted electronic submission; and

   (iii) provide a copy of the electronic tender lodgement service receipt for the initial attempted electronic submission.

An Offer is not assignable by the Respondent without the prior written consent of the Contract Authority or Customer.

If an Offer is submitted by a consortium of two (2) or more persons either by way of joint venture, partnership or otherwise, the Offer is binding on those persons jointly and severally.

An Offer is, upon submission, the absolute property of the Contract Authority or Customer and will not be returned to the Respondent. Nothing in this provision affects the intellectual property rights of the Respondent in the Offer, except that the Contract Authority or Customer may make such copies of the Offer as the Contract Authority or Customer requires for the proper evaluation of the Offer.
2.2 Cancellation And Variation

The Contract Authority or Customer reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Request or any part of the Request.

If the Contract Authority or Customer cancels, varies, supplements, supersedes or replaces the Request, then;

(a) the Contract Authority or Customer will advise each Respondent that the Request has been cancelled, varied, supplemented, superseded or replaced; and

(b) the Respondent shall not have any recourse against the Contract Authority or Customer whatsoever including for claims for any costs or expenses incurred up to and including the date that the Request or any part of the Request is cancelled, varied, supplemented, superseded or replaced.

2.3 Contract Authority's Rights

The Contract Authority or Customer is not obliged to accept the Offer containing the lowest Offered Price.

If the Respondent's Offer makes reference to information on its website, or on any other website, the Contract Authority or the Customer will not take into account that information when evaluating an Offer.

The Contract Authority or Customer is under no obligation to accept any Offer and may reject any Offer or all Offers, in the Contract Authority’s or Customer’s discretion, including:

(a) (failure to comply with Request Conditions) if an Offer fails to comply with these Request Conditions;

(b) (failure to comply with requirements) if an Offer fails to comply with any of the requirements set out in Part B of the Request;

(c) (false or misleading) if an Offer contains information or representations that are false or misleading;

(d) (change of control) if anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Respondent to another person, including in respect of a Respondent which is a body corporate, if there is a change in control of the Respondent within the meaning of the Corporations Act 2001 (Cth);

(e) (change of consortium membership) in respect of a Respondent which consists of a consortium, if there is a change of membership of the consortium members; or

(f) (change of policy or commercial reasons) if the Contract Authority or Customer decides to cancel the Request due to changes of policy or for commercial reasons.

After the Closing Time, the Contract Authority or Customer may:

(a) request additional information from the Respondent in relation to the content of the Offer for the sole purpose of clarifying the Offer; and

(b) request information from the Respondent regarding the financial capacity of the Respondent,
and if so requested, the Respondent must promptly provide such information to the Contract Authority or Customer.

In evaluating an Offer, the Contract Authority or Customer may take into account any information regarding the Respondent that the Contract Authority or Customer has in its possession or receives from any source, including information about the past or current performance of the Respondent under any other contract, arrangement or dealing between the Respondent and a Public Authority.

The Contract Authority or Customer reserves the right to conduct site visits as it deems appropriate.

2.4 Selection Of Preferred Respondent

The Contract Authority or Customer may select, but is not obliged to select, one or more Respondents as a preferred Respondent.

Selection as a preferred Respondent does not confer any rights on a preferred Respondent and the Request Conditions, including clause 2.3, continue to apply until such time as a Contract is awarded or the Request is terminated.

The Respondent agrees that, if it is selected as a preferred Respondent, then:

(a) its Offer will remain open for acceptance by the Contract Authority or Customer at any time prior to the expiry of the Offer Validity Period;
(b) the Contract Authority or Customer may choose to negotiate any aspect of the Offer; and
(c) the Contract Authority or Customer may request the Respondent to provide a performance guarantee, a bank guarantee or some other form of security on terms and conditions acceptable to the Contract Authority or Customer.

At any time during the negotiations either the Contract Authority, the Customer or a preferred Respondent may terminate the negotiations for any reason.

If the Contract Authority or Customer does terminate negotiations, the Contract Authority or Customer may:

(a) accept the Respondent’s original Offer; or
(b) select and then negotiate with any other Respondent as a preferred Respondent in accordance with this clause 2.4; or
(c) terminate the Request.

2.5 Discretion

Whenever the consent of the Contract Authority or Customer is required under the Request, that consent may be given or withheld by the Contract Authority or Customer in the Contract Authority’s or Customer’s absolute discretion and may be given subject to such conditions as the Contract Authority or Customer may determine.

2.6 Agreement With These Request Conditions

In submitting an Offer, the Respondent is deemed to have read and agreed to these Request Conditions.
2.7 Agreement By Respondent

In submitting an Offer, the Respondent agrees that:

**(information true and correct)** all information in its Offer and all Offer Information is true and correct at the time of its submission;

**(relies on own enquiries)** other than in respect of information provided by the Contract Authority or Customer to the Respondent in writing, it relies entirely on its own enquiries in relation to all matters in respect of the Request, the Request Conditions and the General Conditions;

**(understood Request)** it has examined and understood the Request, the Request Conditions, the General Conditions and any other information available to the Respondent in respect of the Request;

**(understood Addenda)** prior to the Closing Time the Respondent must log on to Tenders WA [www.tenders.wa.gov.au] to ensure that prior to submitting its Offer it has examined and understood each Addendum in respect of the Request as by submitting its Offer it will be deemed to have examined and understood each Addendum;

**(made reasonable enquiries)** it has examined all information relevant to the risks, contingencies and other circumstances having an effect on its Offer which is obtainable by the making of reasonable enquiries, which enquiries the Respondent has made;

**(does not rely on warranties)** other than in respect of information provided by the Contract Authority or Customer to the Respondent in writing, it does not rely on any warranty or representation of the Contract Authority, the Customer or any person actually or ostensibly acting on behalf of the Contract Authority or the Customer;

**(no reference to information on websites)** it must not make reference to any information contained on the Respondent's website or on any other website. Any information on the Respondent's website or on any other website which the Respondent wishes the Contract Authority or Customer to rely on must be set out in full in the Respondent's Offer;

**(no secret commission)** it has not paid or received and will not pay or receive any secret commission in respect of the Request;

**(no collusion)** it has not colluded and will not collude with any other person in respect of the Request;

**(no inflation or deflation of Offered Price)** its Offered Price is not inflated or deflated to advantage another Respondent;

**(no unlawful arrangement)** it has not entered and will not enter into any unlawful arrangement with any other person in respect of the Request;

**(no improper influence)** it has not sought and will not seek to influence any decision in respect of the Request by improper means; and

**(own cost and expenses)** it will pay its own costs and expenses in connection with:

(a) the preparation and submission of its Offer; and

(b) any discussions, enquiries or negotiations with, or provision or consideration of further information to, the Contract Authority or Customer, whether before or after the submission of any Offer,
irrespective of whether its Offer is accepted or not.

2.8 Withdrawal Of Offer

The Respondent may withdraw its Offer at any time prior to acceptance of its Offer, by notifying the Contract Authority or Customer in writing.

2.9 Offer Validity

Unless the Respondent withdraws its Offer under clause 2.8, the Respondent agrees that its Offer will remain open for acceptance by the Contract Authority or Customer for the Offer Validity Period.

The Offer Validity Period may be extended or further extended by the Contract Authority or Customer by advising each Respondent in writing at any time or times.

2.10 Disclosure Of Offer Information

(a) The Respondent agrees and acknowledges that its Offer and its Offer Information are subject to the Freedom of Information Act 1992 (WA) and may also be disclosed by the Contract Authority, the Customer or the State under a court order or upon request by Parliament or any committee of Parliament or if otherwise required by law.

(b) By submitting an Offer, the Respondent releases the Contract Authority, the Customer and the State from all liability whatsoever for any loss, injury, damage, liability, costs or expense resulting from the disclosure of its Offer and its Offer Information under this clause by the Contract Authority, the Customer or the State.

(c) The Respondent agrees and acknowledges that the powers and responsibilities of the Auditor General for the State under the Financial Management Act 2006 and the Auditor General’s Act 2006 are not affected in any way by the Request.

(d) Subject to this clause and to the provisions of the Financial Management Act 2006 and the Auditor General’s Act 2006, the Contract Authority and the Customer will not make public any part of the Offer or any Offer Information that the Respondent expressly and reasonably nominates in its Offer as confidential. However, the Contract Authority or Customer may require the Respondent to withdraw any claim to confidentiality in respect of any part of the Offer or any Offer Information as a condition of acceptance of the Offer.

2.11 Conflict Of Interest

The Respondent must, prior to any acceptance of its Offer by the Contract Authority or Customer, disclose to the Contract Authority or Customer any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

The Contract Authority or Customer may, in its discretion, accept or reject the Respondent’s Offer if the Contract Authority or Customer considers that the Respondent has, or could reasonably be considered to have, an actual, potential
or perceived conflict of interest in relation to the Request or the performance of the Contract (if awarded) by the Respondent.

2.12 No Bribe, Inducement Or Offer Of Employment

The Respondent must not, without the prior written consent of the Contract Authority or Customer, directly or indirectly approach or communicate with any officer or employee of the Contract Authority or the Customer having any connection or involvement with the Request, with respect to:

(a) an offer of employment; or
(b) availability of employment,

with the Respondent or any related entity.

The Respondent must not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Contract Authority or the Customer in connection with the Request.
PART B – GENERAL CONDITIONS

1. RECITALS

This Part B is the August 2017 version of the WA Government’s General Conditions of Contract for the Supply of Products and/or Services.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these General Conditions, unless the context otherwise requires:

**Acceptance** means sign off by the Customer in acknowledgment that agreed acceptance test criteria or alternative acceptance formalities have been satisfied in respect of the Products and/or Services.

**Adjustment** has the same meaning as in the *GST Act*.

**Adjustment Note** has the same meaning as in the *GST Act*.

**Annexure** means any annexure to a Customer Contract or a Head Agreement.

**Business Day** means any day except a Saturday, Sunday or a public holiday in Western Australia.

**Business Hours** means the hours specified in the Head Agreement or the Customer Contract as applicable or, if none are specified, the hours between 8.00 am and 5.00 pm, Western Australia, on a Business Day.

**Buying Rules** means the defined processes used by the Customer to purchase items under a Common Use Arrangement or Panel Arrangement (if any).

**Commencement Date** means the commencement date specified in the Head Agreement or Customer Contract as the context requires.

**Common Use Arrangement** means a whole of government standing offer arrangement, awarded to a single supplier or a panel of suppliers for the provision of specific goods, services or products commonly used within Government. Common Use Arrangements are aggregated supply arrangements that enable Public Authorities and other specified parties to source Products and/or Services.

**Confidential Information** means information in respect of the Customer Contract or a Head Agreement that:

(a) is by its nature confidential; or

(b) is specified by the Contract Authority or the Customer to be confidential, including any information specified to be confidential in the Customer Contract; or

(c) the Contractor knows or ought to know is confidential.

**Consultancy Services** means the consultancy services (if any) described in the Customer Contract.

**Contract Authority** means the person specified as the contract authority in the Head Agreement.
**Contract Authority's Representative** means a person appointed by the Contract Authority whose functions and powers are set out in clause 33.2.

**Contractor** means the person specified as the contractor in the Customer Contract or the Head Agreement.

**Contractor Personnel** means all officers, employees, agents and subcontractors of the Contractor, and all officers, employees or agents of subcontractors, engaged in relation to the supply of the Products and/or Services.

**Contractor's Representative** means a person appointed by the Contractor whose functions and powers are set out in clause 33.3.

**Copyright Act** means the *Copyright Act 1968* (Cth).

**Customer** means the person (if any) specified as the Customer in the Customer Contract.

**Customer Contract** means the contract between the Customer and the Contractor for the supply of Products and/or Services by the Contractor, the terms and conditions of which are contained in the Customer Contract Documents.

**Customer Contract Details** means the relevant Schedule to the Request, describing the specific requirements of the Customer in respect of Products and/or Services to be delivered by the Contractor.

**Customer Contract Documents** means:

(a) the Letter or, when buying off a Common Use Arrangement, or a Panel Arrangement, an Order;

(b) when buying off a Common Use Arrangement or a Panel Arrangement, the price list in the Head Agreement;

(c) when buying off a Common Use Arrangement or a Panel Arrangement, the letter awarding the Head Agreement;

(d) the Offer;

(e) the Customer Contract Details;

(f) the Request, including any addenda; and

(g) these General Conditions.

**Customer Personnel** means the Customer’s officers, employees and agents.

**Customer's Representative** means a person appointed by the Customer whose functions and powers are set out in clause 33.1.

**Deliverable** means any deliverable referred to in the Request.

**Delivery Date** means the date for delivery of the Products specified in the Customer Contract/Order.

**Delivery Place** means the place for delivery of the Products specified in the Customer Contract/Order.

**Delivery Time** means the time for delivery of the Products specified in the Customer Contract/Order.

**Developed Software** means the software (if any) to be created by the Contractor under the Customer Contract.

**Discount** means any discount in respect of the Price specified in the Customer Contract.
Event of Default means the occurrence of any one of the following events:

(a) the Contractor breaches an obligation under the Customer Contract or any Head Agreement that cannot be remedied; or

(b) the Contractor breaches any other obligation under the Customer Contract or any Head Agreement and that breach is not remedied within 10 Business Days after the Contract Authority or the Customer gives a notice to the Contractor requiring the breach to be remedied; or

(c) the Contractor commits 3 breaches of its obligations under the Customer Contract or any Head Agreement over any 12 month period, whether or not the Contract Authority or the Customer has given the Contractor notice of any such breaches and whether or not the Contractor has rectified such breaches; or

(d) a representation or warranty made by the Contractor under the Customer Contract or any Head Agreement is or becomes untrue or is breached; or

(e) an Insolvency Event occurs in respect of the Contractor; or

(f) the Contractor ceases, or threatens to cease, to carry on business; or

(g) the Contractor or any person included in the Specified Personnel is convicted of a criminal offence that is punishable by imprisonment or detention; or

(h) if the Contractor is a body corporate, the Contractor is convicted of a criminal or statutory offence that is punishable by a fine or penalty of, or exceeding, $10,000; or

(i) if in the reasonable opinion of the Contract Authority or the Customer, the reputation of the Contract Authority, the Customer, the State of Western Australia or the Government of Western Australia is, or is likely to be, damaged by any act or omission of the Contractor.

Existing Material means a work (as defined in the Copyright Act), a product or any other material, which satisfies all of the following criteria:

(a) the work, product or other material:

(i) was created prior to the commencement of the Term; or

(ii) is to be created during the Term outside the scope of the Customer Contract, including any subsequent modifications to such work, product or other material;

(b) the Intellectual Property Rights in the work, product or other material are not owned by the Crown in right of the State of Western Australia, the Contract Authority or the Customer; and

(c) the work, product or other material is required specifically for, or in connection with, the Products and/or Services or Records.

Faulty Products means any Products that do not comply with the Customer Contract or are otherwise defective in any manner.

Faulty Services means any Services that do not comply with the Customer Contract or are otherwise defective in any manner.

General Conditions means these general conditions of contract.

GST has the same meaning as in the GST Act.
GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and, where the context permits, includes the Commissioner of Taxation’s goods and services tax rulings and determinations and any other written law dealing with GST applying for the time being in the State of Western Australia.

Hardware means the hardware (if any) to be supplied by the Contractor under the Customer Contract as described, and in the quantity as specified, including plans and/or any supporting documentation.

Hardware Maintenance Services means the maintenance services (if any) described in the Customer Contract.

Head Agreement means any head agreement entered into between the Contract Authority and the Contractor under a Common Use Arrangement or a Panel Arrangement.

Head Agreement Details means the relevant Schedule to the Request, describing the specific requirements of the Contract Authority in respect of Products and/or Services to be delivered by the Contractor under Customer Contracts.

Head Agreement Documents means:

(a) the letter or other instrument issued by the Contract Authority accepting the Contractor’s Offer, which letter may also specify:
   (i) any amendments to these General Conditions, the Head Agreement or the Customer Contract Details or any of them;
   (ii) any other terms and conditions which are to form part of the Head Agreement, the Customer Contract or both; and which the Contract Authority and the Contractor have agreed;

(b) the Offer;

(c) the Head Agreement Details;

(d) the Request, including any addenda; and

(e) these General Conditions.

Insolvency Event means the happening of any of these events:

(a) an order is made, or an application is made to a court for an order, that a body corporate be wound up; or

(b) except to reconstruct or amalgamate while solvent, a body corporate:
   (i) is wound up or dissolved; or
   (ii) resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so; or
   (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement, deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or

(c) a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or
(d) a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act 2001 (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate or any asset or undertaking of a body corporate; or

(e) any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against any asset or undertaking of a body corporate; or

(f) the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment of money or the recovery of any property; or

(g) a body corporate:
    (i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or
    (ii) stops or suspends payment of all, or a class of, its debts; or
    (iii) is or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:
        (A) insolvent or unable to pay its debts when they fall due; or
        (B) the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth); or
    (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth); or
    (v) ceases, or threatens to cease, to carry on all or a material part of its business; or

(h) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken which could result in that event; or

(i) a person dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs for any reason; or

(j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Intellectual Property Rights means:

(a) patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to have confidential information (being information which is capable of being protected by way of an action for breach of confidence) kept confidential; and

(b) any application or right to apply for registration of any of those rights, but does not include Moral Rights.

Letter means the letter signed by the Customer that:

(a) accepts the Offer; and

(b) may also specify:
    (i) any amendments to these General Conditions or the Customer Contract Details or both;
(ii) any other terms and conditions which are to form part of the Customer Contract; and

which the Customer and the Contractor have agreed.

Licensed Software means the software (if any) specified in the Customer Contract which is to be supplied by the Contractor to the Customer and in respect of which:

(a) ownership does not pass to the Customer; and
(b) the Customer's rights of use are subject to the conditions specified in clause 11.

Managed Services means the managed services (if any) described in the Customer Contract.

Material means Existing Material and New Material.

New Material means anything created by the Contractor under the Customer Contract in which Intellectual Property Rights subsist.

Moral Rights has the same meaning as in the Copyright Act.

Offer means the offer submitted by the Contractor in response to the Request.

Order means a purchase order for Products and/or Services made by the Customer under a Customer Contract or under a Head Agreement.

Panel means the panel of suppliers of the Products and/or Services established under clauses 4.18 to 4.21 inclusive, where each supplier must provide Products and/or Services to Customers in accordance with the Head Agreement and the relevant Customer Contract.

Panel Arrangement means the arrangement for the supply of Products and/or Services by members of the Panel to Customers.

Potential Customer means:

(a) Public Authorities which have not received an exemption from the requirement to purchase the Products and/or Services under the Common Use Arrangement from the State Supply Commission pursuant to the State Supply Commission policy entitled "Common Use Arrangements"; and
(b) any other person or body approved by the State Supply Commission under section 23 of the State Supply Commission Act 1991.

(See www.finance.wa.gov.au > Government Procurement > Not-for-Profit > Accessing Common Use Arrangements for more information.)

PPSA means the Personal Property Securities Act 2009 (Cth).

PPS Law means the PPSA and any amendment made at any time to the Corporations Act 2001 (Cth) or any other legislation as a consequence of the PPSA.

Premises means any premises which are owned or occupied by the Customer and:

(a) are identified in the Customer Contract; or
(b) are premises on which the Products and/or Services are to be supplied or to which the Contractor has access in order to supply the Products and/or Services,

and includes anything on those premises.
Price means the price that is:
(a) specified in the Customer Contract or Head Agreement; or
(b) determined by applying any formula or method that is specified in the Customer Contract or Head Agreement.

Products means:
(a) the deliverables, goods, hardware, products or software (if any) described, and in the quantity specified, in the Head Agreement or Customer Contract; and
(b) goods for the purposes of any State Supply Commission policy.

Products and/or Services means:
(a) Products, if the Customer Contract is for the supply of Products only; or
(b) Services, if the Customer Contract is for the supply of Services only; or
(c) Products and Services, if the Customer Contract is for the supply of Products and Services.

Public Authority has the same meaning as in the State Supply Commission Act 1991.

Records means records and information of any kind, including originals and copies of all accounts, financial statements, books, files, reports, records, correspondence, documents and other materials created for, or relating to, or used in connection with, the supply of the Products and/or Services, whether or not containing Confidential Information, and however such records and information are held, stored or recorded.

Request means the request issued by the Contract Authority or the Customer for the supply of the Products and/or Services.

Schedule means a schedule to the Request.

Services means the services (if any) described in the Customer Contract or Head Agreement.

Software means Developed Software, Licensed Software, Product or Third Party Software, as the context dictates.

Software Development Services means the software development services (if any) described in the Customer Contract.

Software Support Services means the software support services (if any) described in the Customer Contract, in respect of any of Developed Software, Licensed Software or Third Party Software.

Specification means the specification of the Products and/or Services specified, or referred to, in the Customer Contract or Head Agreement.

Specified Personnel means the Contractor Personnel specified in the Customer Contract.

State means the State of Western Australia.

System means the system which is the subject of the Systems Integration Services, as described in the Customer Contract.

Systems Integration Services means the systems integration services (if any) described in the Customer Contract.
Telecommunications Services means the telecommunications services (if any) described in the Customer Contract.

Term means the initial term of the Customer Contract or Head Agreement or both of them as the context requires and includes any extension of that initial term.

Third Party Software means software which is owned by a person other than the Crown in right of the State of Western Australia the Customer or the Contractor and which is the subject of a Service.

Working Papers means all working papers, notes, reports, documents and other works (whether in paper, electronic or other forms) brought into existence by the Contractor for the purposes of performing the Contractor’s obligations under the Customer Contract.

2.2 Interpretations
In these General Conditions, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;

(c) a reference to a gender includes other genders;

(d) a reference to a person includes a Public Authority, a public body, a company and an incorporated or unincorporated association or body of persons;

(e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, but not limited to, a person taking by novation) and permitted assigns;

(f) if the Contractor consists of a partnership or joint venture, then:

(i) an obligation imposed on the Contractor under the Head Agreement or the Customer Contract binds each person who comprises the Contractor jointly and severally;

(ii) each person who comprises the Contractor is deemed to agree to do all things necessary to enable the obligations imposed on the Contractor under the Head Agreement or the Customer Contract to be undertaken;

(iii) the act of one person who comprises the Contractor binds the other persons who comprise the Contractor; and

(iv) an Event of Default by one person who comprises the Contractor constitutes an Event of Default by the Contractor;

(g) an agreement, representation or warranty on the part of, or in favour of, 2 or more persons binds, or is for the benefit of, them jointly and severally;

(h) a reference to the Head Agreement or the Customer Contract or another instrument includes all variations and replacements of either of them despite any change of, or any change in the identity of, the Contract Authority, the Customer or the Contractor;

(i) a reference to a clause, schedule, attachment or appendix is a reference to a clause in, or a schedule, attachment or appendix to, these General Conditions;
(j) all the provisions in any schedule, attachment or appendix to these General Conditions are incorporated in, and form part of, these General Conditions and bind the Contract Authority, the Customer and the Contractor;

(k) headings are included for convenience and do not affect the interpretation of these General Conditions;

(l) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(m) no rule of interpretation is to be applied to disadvantage the Contract Authority, the Customer or the Contractor on the basis that it was responsible for preparing the Customer Contract or Head Agreement;

(n) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;

(o) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;

(p) a reference to writing includes all means of representing or reproducing words in visible form including by electronic means such as facsimile transmission;

(q) a reference to a liability includes all obligations to pay money and all other losses, costs and expenses of any kind;

(r) a reference to a day is to a calendar day, a month is to a calendar month and a year is to a calendar year;

(s) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day;

(t) if a date stipulated for payment or for doing an act is not a Business Day, the payment must be made, or the act must be done, on the next Business Day;

(u) a reference to time means the time observed by the general community from time to time in Western Australia;

(v) a reference to a monetary amount means that amount in Australian currency;

(w) where the context permits or requires reference to the Contractor includes the Contractor Personnel; and

(x) where the context permits or requires reference to the Customer includes the Customer’s Personnel.

3. SCOPE OF CUSTOMER CONTRACT AND HEAD AGREEMENT

3.1 Products and/or Services

If this is a Common Use Arrangement or a Panel Arrangement the Head Agreement constitutes a standing offer whereby Customers and Potential Customers may acquire Products and/or Services specified in the Head Agreement from the Contractor.
If this is not a Common Use Arrangement or a Panel Arrangement, the Customer Contract is for the Products and/or Services specified in the Customer Contract Documents.

### 3.2 Pricing
The Price is:

(a) in the case of a Common Use Arrangement or a Panel Arrangement, determined by reference to the Head Agreement and any Order; or

(b) if not a Common Use Arrangement or a Panel Arrangement, determined by reference to the Customer Contract.

### 3.3 Term of Customer Contract
The Customer Contract is for the Term.

### 3.4 Extension of Customer Contract
The Customer has the option or options (exercisable in its absolute discretion) to extend the Term for the period or periods (as applicable) specified in the Customer Contract.

If the Customer wishes to exercise an option under this clause, then the Customer must give the Contractor a notice:

(a) by the date or dates specified in the Customer Contract; or

(b) if no period is specified in the Customer Contract, at least 20 Business Days before the expiry of the Term,

stating that the Customer Contract is to be extended and the period of the extension.

If the Customer exercises an option under this clause, then references to “the Term” in these General Conditions are to be read as including the period of extension of the Term.

### 3.5 Standards and Codes

#### Products
The Contractor must supply the Products in accordance with the Specification.

All Products delivered by the Contractor must conform:

(a) with all samples provided by the Contractor to the Contract Authority or the Customer; and

(b) if no standards for the Products are specified in the Specification, to all relevant and current standards published by the Standards Association of Australia.

#### Services
(a) The Contractor must supply the Services in accordance with the Specification.
(b) If no standards for the Services are specified in the Specification, then the Contractor must supply the Services in accordance with the highest standards that usually apply to the supply of the Services and with proper skill, care and diligence.

3.6 **Scope of the Head Agreement**

The Contract Authority and the Contractor agree that:

(a) the Contractor must maintain an offer throughout the Term to supply the Products and/or Services to Customers and Potential Customers, which offer may be accepted by a Customer or Potential Customer at any time during the Term, on the terms and conditions set out in the Head Agreement; and

(b) the Head Agreement only confers on the Contractor the right to enter into a Customer Contract:

(i) for the supply of the Products and/or Services described in the Head Agreement; and

(ii) that conform to:

(A) the price list contained in the Head Agreement;

(B) the Customer Contract Details; and

(C) the General Conditions.

3.7 **Term of Head Agreement**

The Head Agreement is for the Term.

3.8 **Extension of Head Agreement**

The Contract Authority has the option or options (exercisable in its absolute discretion) to extend the Term for the period or periods (as applicable) specified in the Head Agreement.

If the Contract Authority wishes to exercise an option under this clause, then the Contract Authority must give the Contractor a notice:

(a) by the date or dates specified in the Head Agreement; or

(b) if no period is specified in the Head Agreement, at least 20 Business Days before the expiry of the Term,

stating that the Head Agreement is to be extended and the period of the extension.

If the Contract Authority exercises an option under this clause, then references to "the Term" in these General Conditions are to be read as including the period of extension of the Term.

4. **FORMATION OF CUSTOMER CONTRACT AND HEAD AGREEMENT**

In this clause 4:
(a) if this is a Common Use Arrangement then sub-clauses 4.3 to 4.17 are part of a Head Agreement;
(b) if this is a Panel Arrangement and a Common Use Arrangement, then sub-clauses 4.18 to 4.21 are part of a Head Agreement; and
(c) if this is a Panel Arrangement and not a Common Use Arrangement then sub-clauses 4.12 to 4.21 are part of a Head Agreement and Customer Contract.

4.1 Formation of Customer Contract
A Customer Contract comes into existence when the Contractor receives a Letter or an Order.
Subject to clause 4.3, the terms of a Customer Contract are contained in the Customer Contract Documents.

4.2 Formation of Head Agreement
A Head Agreement comes into existence when the Contract Authority accepts the Contractor’s Offer in respect of a Common Use Arrangement or a Panel Arrangement, whether by letter or other instrument.
The terms of a Head Agreement are contained in the Head Agreement Documents.

4.3 Constitution of Customer Contract
The Contract Authority and the Contractor agree that:
(a) the following documents constitute a contract between the relevant Customer and the Contractor:
   (i) an Order;
   (ii) the price list contained in the Head Agreement;
   (iii) the letter awarding the Head Agreement;
   (iv) the Offer;
   (v) the Head Agreement Details;
   (vi) the Request; and
   (vii) the General Conditions;
(b) a Customer Contract will commence on the date the Products and/or Services are ordered; and
(c) each Customer Contract must be for the supply of the Products and/or Services described in the Head Agreement.

4.4 Orders
The Contract Authority and the Contractor agree that:
(a) a Potential Customer or a Customer (as applicable) may submit an Order to the Contractor at any time during Term; and
(b) any order submitted by a Customer to the Contractor is deemed to be an Order for the purposes of the Head Agreement and the Customer Contract, whether or not all details have been included in the order and whether or not the order is identified as an Order.

4.5 Supply of Products and/or Services to Customers

The Contract Authority and the Contractor agree that:

(a) if the Contractor receives an Order it must provide Products and/or Services in accordance with the Order and the Head Agreement;

(b) unless the Contract Authority otherwise agrees, the Contractor will not provide any Products and/or Services to any Customer or Potential Customer which are capable of being provided under a Customer Contract unless those Products and/or Services are provided under the terms and conditions of the Head Agreement; and

(c) unless the Contract Authority otherwise agrees and notwithstanding any agreement or arrangement between the Contractor and the Customer or Potential Customer to the contrary, any Products and/or Services provided to a Potential Customer which are capable of being provided under the Head Agreement are deemed to be provided pursuant to, and on the terms and conditions of, the Head Agreement and the Potential Customer will be a Customer for the purposes of the Head Agreement and the deemed Order.

4.6 Variation of Order

The Contract Authority and the Contractor agree that an Order can be varied on the condition that the variation is within the scope of the Head Agreement and that it does not erode, undermine or in any way conflict with the Head Agreement.

4.7 Contract Authority's liability under the Head Agreement

The Contract Authority and the Contractor agree that the Contract Authority is not and will not be liable to the Contractor:

(a) to perform any obligation, or satisfy any liability, of a Customer; or

(b) to rectify any breach or default of a Customer; or

(c) in respect of any claim, loss, liability or damage which the Contractor suffers or incurs as a consequence of, or in connection with, an Order or the Contractor's dealings with a Customer.

4.8 Effect of Expiration or Termination of the Head Agreement

The Contract Authority and the Contractor agree that:

(a) expiration or termination of the Head Agreement will not affect any existing Order;

(b) if the Head Agreement expires or is terminated, then the Contractor may not enter into any new Orders after the date of expiration or termination; and
(c) the Contractor will not be entitled to any compensation for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of the Head Agreement.

4.9 Effect of Expiration or Termination of Orders
The Contract Authority and the Contractor agree that:
(a) expiration or termination of an Order will not affect the Head Agreement; and
(b) the Contractor will not be entitled to any compensation from the Contract Authority for loss or damages for future profits or loss of income as a result of, or in connection with, the expiration or termination of an Order.

4.10 Dealing with Head Agreement
If the Head Agreement is assigned or novated from the Contractor to a third party, then:
(a) the Customer and the Contractor agree that the Customer Contract is deemed to be assigned or novated from the Contractor to the third party; and
(b) the Customer appoints the Contract Authority as its agent to do all things necessary or convenient to give effect to the deemed assignment or novation.

4.11 Agency
The Customer appoints the Contract Authority as its agent to exercise all functions conferred on the Contract Authority under the Customer Contract. The Contract Authority is not personally liable for any claim, loss, liability or damage which the Contractor suffers or incurs as a consequence of, or in connection with, any function undertaken by the Contract Authority while acting as agent for the Customer.

4.12 Application of this clause
If the Head Agreement relates to a Panel Arrangement or Common Use Arrangement for the supply of:
(a) Products; or
(b) Products and/or Services;
then clauses 4.13 to 4.17 form part of the Head Agreement.

4.13 Addition of Products
The Contractor must promptly notify the Contract Authority in writing when it offers to supply:
(a) a new product which is similar in nature to, or has the same function as, a Product (“New Product”); or
(b) a product which is an improved version of a Product (“Improved Product”),
on a general commercial basis or otherwise to the public or other customers. If required by the Contract Authority, the Contractor must add the New Product or the Improved Product (as applicable) to the list of Products offered to Customers under the Head Agreement.

4.14 Deletion of Products

The Contractor may, with the Contract Authority's prior written consent, remove a Product ("Deleted Product") from the list of Products offered to Customers under the Head Agreement.

4.15 Substitution of Products

The Contractor may, with the Contract Authority's prior written consent, permanently or temporarily substitute another product ("Substitute Product") for a Product which is offered to Customers under the Head Agreement ("Substituted Product"), whether the Substitute Product is:

(a) different in nature from, or has a different function to, the Substituted Product;
(b) supplied or sourced from a different country of origin than the Substituted Product; or
(c) manufactured by a manufacturer other than the manufacturer of the Substituted Product.

4.16 Effective Date of Addition, Deletion or Substitution

(a) The Contractor must:
   (i) offer the New Product, the Improved Product or the Substitute Product; or
   (ii) cease offering the Deleted Product or the Substituted Product, (as applicable) to Customers and Potential Customers on and from a date approved by the Contract Authority.

(b) On and from the date approved:
   (i) the Head Agreement is deemed to be amended to remove the Deleted Product or the Substituted Product or to include the New Product, the Improved Product or the Substitute Product (as applicable);
   (ii) references to "Products" in the Head Agreement exclude the Deleted Product or the Substituted Product and include the New Product, the Improved Product or the Substitute Product (as applicable);
   (iii) Customers and Potential Customers may no longer submit Orders for the Deleted Product or the Substituted Product (as applicable);
   (iv) Customers and Potential Customers may submit Orders for the New Product, the Improved Product or the Substitute Product (as applicable); and
   (v) all Contracts and outstanding Orders submitted by Customers and Potential Customers are deemed to be amended to:
(A) delete references to the Deleted Product; and

(B) delete references to the Substituted Product and substitute references to the Substitute Product, as applicable.

### 4.17 Provision of Information

The Contractor must promptly provide any information requested by the Contract Authority in respect of the proposed New Product, Improved Product or Substitute Product and must promptly provide samples of the proposed New Product, Improved Product or Substitute Product if requested by the Contract Authority.

### 4.18 Generally

(a) In this clause:

- **Panel** means the panel of Panel Members.
- **Panel Arrangement** means the arrangement for the supply of Products and/or Services by Panel Members to the Customer.
- **Panel Member** means a successful Respondent or other entity who has been appointed as a member of the Panel.

(b) This clause applies to a Panel Arrangement established by the Contract Authority or Customer for the supply of Products and/or Services to the Customer.

(c) The Contract Authority or Customer reserves the right:

(i) to appoint as many Panel Members as it sees fit; and

(ii) at any time and from time to time, to supplement the Panel with additional Panel Members.

(d) The Customer will purchase Products and/or Services from the Panel in accordance with the Buying Rules.

(e) Each Panel Member acknowledges that, without limiting sub-clause (d):

(i) the Customer may request Products and/or Services from any Panel Member;

(ii) neither the Contract Authority nor the Customer makes any representation that the Customer will procure or seek to procure the Products and/or Services, or any particular volume of Products and/or Services, from a Panel Member;

(iii) the Customer will request Products and/or Services from a Panel Member by submitting an Order to proceed to that Panel Member;

(iv) a Panel Member may not receive any Orders from the Customer during the Term; and

(v) appointment to a Panel does not give a Panel Member an exclusive right to provide the Products and/or Services to the Customer.

(f) On termination of a Panel Member’s contract under clause 35 of the General Conditions, that Panel Member is immediately removed from the Panel and is prohibited from rejoining the Panel under sub-clause (c)(ii).
4.19 Consequences of being appointed to Panel

The Contractor acknowledges that:

(a) Customers and Potential Customers may submit Orders to the Contractor or to any other member of the Panel; and

(b) appointment to a Panel does not give the Contractor an exclusive right to provide the Products and/or Services to the Contract Authority, a Customer or a Potential Customer.

4.20 Change Panel

The Contract Authority or Customer reserves the right, at any time and from time to time, to cancel, vary, supplement, supersede or replace the Panel or any member of the Panel.

4.21 Accessing the Panel

The Contract Authority, Customer and the Contractor agree that:

(a) a Customer or Potential Customer will access the Panel in accordance with the Buying Rules from time to time;

(b) the Buying Rules, as at the date of the Head Agreement, are set out in Schedule 6; and

(c) the Contract Authority or Customer may change the Buying Rules from time to time during the Term.

4.22 No assurance of Orders

The Contractor acknowledges that the Contractor may not receive any Orders from any Customer or any Potential Customer during the Term.

None of the Contract Authority, any Customer nor any Potential Customer makes any representation that it will procure or seek to procure any particular volume of Products and/or Services from the Contractor.

4.23 Order of Precedence – Customer Contract Documents

The Customer Contract Documents shall be read in the order of precedence specified in the Customer Contract Documents.

If no order of precedence is specified in the Customer Contract Documents, then the Customer Contract Documents shall be read in the following order of precedence:

(a) the Letter or, when buying off a Common Use Arrangement or a Panel Arrangement, an Order;

(b) when buying off a Common Use Arrangement or a Panel Arrangement, the price list contained in the Head Agreement;
(c) when buying off a Common Use Arrangement or a Panel Arrangement, the letter awarding the Head Agreement;

(d) the Customer Contract Details;

(e) the Offer;

(f) the Request, including any addenda; and

(g) these General Conditions.

Where any inconsistency occurs between the provisions contained in two or more Customer Contract Documents, the Customer Contract Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Customer Contract Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

4.24 Order of Precedence – Head Agreement Documents

The Head Agreement Documents shall be read in the order of precedence specified in the Head Agreement Documents.

If no order of precedence is specified in the Head Agreement Documents, then the Head Agreement Documents shall be read in the following order of precedence:

(a) the letter or other instrument issued by the Contract Authority accepting the Contractor’s Offer;

(b) the Head Agreement Details;

(c) the Offer;

(d) the Request, including any addenda; and

(e) these General Conditions.

Where any inconsistency occurs between the provisions contained in two or more Head Agreement Documents, the Head Agreement Document lower in the order of precedence shall where possible be read down to resolve the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions shall be severed from the Head Agreement Document lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that document.

4.25 Variations – Customer Contract

The Customer and the Contractor may vary the Customer Contract or any other technical requirements of the Customer by completing and signing a change order in the form specified in Schedule 12 to the Request.

If there is no schedule 12 to the Request, the Customer Contract may only be varied in writing executed by the Customer and the Contractor.

4.26 Variations – Head Agreement

The Head Agreement may only be varied in writing executed by the Contract Authority and the Contractor.
5. **RELATIONSHIP**

The Contractor is an independent contractor, and nothing in the Customer Contract or the Head Agreement may be construed to make the Contractor a partner, agent, employee or joint venturer of the Contract Authority or the Customer.

The Contractor must not represent that the Contractor or any of its Contractor Personnel are the employees, agents, partners or joint venturers of the Contract Authority or the Customer.

6. **SERVICE SPECIFIC ISSUES - SUPPLY OF CONSULTANCY AND CONTRACTING SERVICES**

6.1 **Application of this clause**

If the Customer Contract is for the supply of:

(a) Services; or

(b) Products and/or Services,

then this clause 6 forms part of the Customer Contract.

6.2 **Supply of Services**

The Contractor must supply the Services during the Term in accordance with the Customer Contract.

6.3 **Orders**

If the Customer Contract refers to the giving of Orders for the Services, then the Contractor must supply the Services in accordance with Orders given by the Customer.

The Customer may give the Contractor an Order at any time.

The Customer may give the Contractor any number of Orders.

An Order must specify:

(a) the Services;

(b) the scope of the Services; and

(c) the date, time and place for performance of the Services (if applicable).

6.4 **Additional Work**

If, at the written request of the Customer, the Contractor performs work that is additional to the Services, then the Customer must pay the Contractor for the additional work:

(a) at the rate specified in the Customer Contract; or

(b) if no rate is specified in the Customer Contract, at the rate agreed between the Customer and the Contractor; or
if no rate is agreed under this clause 6.4 within 10 Business Days from the date of the Customer’s request, at the reasonable rate determined by the Customer.

6.5 **Specified Personnel**

If the Customer requires Specified Personnel, then the Contractor:

(a) must ensure that all Specified Personnel are available to carry out, and do carry out, the Services; and

(b) must not allow the Services to be carried out by any other person without the prior written consent of the Customer.

The Contractor must remove any person included in the Specified Personnel from the supply of the Services if the Customer reasonably requires by notice in writing to the Contractor that the person be removed. If requested, the Customer must give the Contractor the reason for the removal of the person included in the Specified Personnel.

If the Customer gives a notice to the Contractor under this clause 6.5, then the Contractor must promptly:

(a) remove the person included in the Specified Personnel; and

(b) replace the person included in the Specified Personnel with additional Contractor Personnel of similar skills and experience reasonably acceptable to the Customer.

If Specified Personnel are replaced with additional Contractor Personnel under this clause 6.5, then references to Specified Personnel are taken to include such additional Contractor Personnel.

6.6 **Unsatisfactory Services**

If the Customer finds that any of the Services are Faulty Services, then, without limiting any other remedy available to the Customer, the Customer may by notice to the Contractor require the Contractor to re-supply the Faulty Services and the Contractor must re-supply the Faulty Services at no cost to the Customer.

If the Contractor receives a notice under this clause 6.6 and the Contractor does not re-supply the Faulty Services within a reasonable time, then the Customer may purchase from another supplier substitute services which in the opinion of the Customer (as applicable) are most suitable, even though such services may be of a different kind, quantity and quality from the Services.

If the Customer purchases substitute services, then:

(a) the Customer does not have to pay the Price for the Faulty Services; and

(b) the Contractor must reimburse the Customer (as applicable) for:

(i) any amount by which the cost of substitute services exceeds the Price for the Faulty Services; and

(ii) the Customer’s reasonable costs and expenses resulting from having to purchase substitute services,

within 5 Business Days from the date that the Customer (as applicable) gives the Contractor an invoice for those costs.
7. HARDWARE/PRODUCT SPECIFIC ISSUES

7.1 Application of this clause
    If the Customer Contract is for the supply of:
    (a) Products; or
    (b) Products and/or Services;
    then this clause 7 forms part of the Customer Contract or the Head Agreement.

7.2 Supply of Products
    The Contractor must supply the Products during the Term in accordance with the
    Customer Contract or the Head Agreement.

7.3 Orders
    If the Customer Contract or the Head Agreement refers to the giving of Orders for
    the Products, then the Contractor must supply the Products in accordance with
    Orders given by the Customer.
    The Customer may give the Contractor an Order at any time during the Term.
    The Customer may give the Contractor any number of Orders.
    An Order must specify:
    (a) the Products;
    (b) the quantity of the Products; and
    (c) the date, time and place for delivery of the Products if different from the
        Delivery Date, Delivery Time or Delivery Place.

7.4 Inspection and Testing
    Subject to the Customer:
    (a) giving reasonable prior notice to the Contractor; and
    (b) complying with all reasonable directions and procedures of the Contractor
        relating to occupational health, safety, security and confidentiality in
        connection with the Contractor's premises,
    the Customer may inspect and test any Products at the Contractor's premises at
    any time during the Term.
    The Contractor must do everything reasonably necessary to enable the
    inspection and testing to be carried out.

7.5 Sources of Supply
    If the Customer requests, the Contractor must use reasonable endeavours to
    promptly provide full details of:
    (a) the method and place of manufacture or production;
    (b) the materials used in manufacture or production;
(c) the source of supply; and
(d) everything else reasonably required by the Customer,
in connection with any of the Products or any equipment provided or used by the Contractor in relation to the manufacture, production or supply of the Products.

7.6 Packing

All Products must be properly and securely packaged and accurately labelled for identification and safety before delivery to the Customer.

7.7 Delivery

Unless the Customer specifies otherwise in an Order, the Contractor must deliver the Products to the Delivery Place on the Delivery Date at the Delivery Time.

If no Delivery Date or Delivery Time is specified in the Customer Contract or in an Order, then:

(a) the Contractor must give notice to the Customer at least 2 Business Days before the delivery of Products; and
(b) the Contractor must deliver the Products during Business Hours.

If a period of days is specified as the Delivery Time, then the Contractor must deliver the Products within Business Hours on any day in that period.

The Contractor must comply with all reasonable directions from the Customer or any other person who has control of the Delivery Place.

7.8 Variation of Delivery

The Customer may at any time, including at the time of actual delivery, vary the Delivery Place, the Delivery Date or the Delivery Time.

When possible, the Customer will use reasonable endeavours to inform the Contractor of the variation a reasonable time before delivery is due.

The Customer must reimburse the Contractor for the Contractor’s reasonable costs and expenses resulting from a variation to the Delivery Place, Delivery Date or Delivery Time under this clause 7.8.

7.9 Delay in Delivery Date - Contractor Caused

If delivery of the Products is likely to be delayed until after the Delivery Date due to an act or omission of the Contractor, then the Contractor must notify the Customer of the likely delay as soon as the Contractor becomes aware of it.

A notice from the Contractor under this clause 7.9 does not release the Contractor from its obligations relating to delivery of the Products or from any other obligation or liability under the Customer Contract.

If:

(a) the Customer receives a notice under this clause 7.9; or
(b) the Products are not delivered by the Delivery Date,
and the Customer requires the Products by the Delivery Date, then the Customer:

(i) must give notice to the Contractor if it intends to purchase substitute goods from another supplier under this clause 7.9 no later than 5 Business Days before the purchase of the substitute goods; and

(ii) may purchase from another supplier substitute goods which in the opinion of the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Products.

If the Customer purchases substitute goods:

(a) the Customer does not have to take delivery of, or pay the Price for, the Products; and

(b) the Contractor must reimburse the Customer (as applicable) for:

(i) any amount by which the cost of substitute goods exceeds the Price for the Products; and

(ii) the Customer’s reasonable costs and expenses resulting from having to purchase substitute goods,

within 10 Business Days from the date on which the Customer (as applicable) gives the Contractor an invoice for those costs.

7.10 Delay in Delivery Date - Customer Caused

If delivery of the Products is likely to be delayed until after the Delivery Date due to an act or omission of the Customer and that act or omission justifies an extension of the Delivery Date, then the Contractor must, within 10 Business Days after the act or omission of the Customer giving rise to the delay, notify the Customer in writing of:

(a) the strategies that the Contractor has developed and will implement to avoid, minimise or manage the consequences of the delay;

(b) the period, or likely period, of delay;

(c) the likely effect of the delay on the Customer Contract;

(d) the additional costs which the Contractor will reasonably incur, and

(e) request an extension of time that is reasonable in the circumstances.

After receiving a request for an extension of time under this clause 7.10, the Customer must:

(a) promptly consent to a reasonable extension of time; and

(b) pay all reasonable additional costs incurred by the Contractor within 30 days of receiving the request,

unless there are reasonable grounds for refusing its consent.

Clauses 8 to 15 apply to Information, Communications and Technology (ICT) Contracts only
8. SERVICE SPECIFIC ISSUES - SUPPLY OF HARDWARE MAINTENANCE SERVICES

8.1 Application of this clause
If the Customer Contract is for the supply of Hardware Maintenance Services, then, without limiting clause 9, this clause 8 forms part of the Customer Contract.

8.2 Commencement of Maintenance
Except to the extent stated to the contrary in the Customer Contract (including, if applicable, Schedule 9 to the Request), any rectification of defects in the Hardware, which are required during the warranty period, will be provided to the Customer by the Contractor free of charge.

The Hardware Maintenance Services will commence on the date specified in the Customer Contract and will be renewable as specified in the Customer Contract.

For the removal of doubt, if the Services relate to Hardware purchased under the Customer Contract, then the initial term of the Hardware Maintenance Services will not commence until the expiry of any relevant warranty period for the Hardware, unless specified to the contrary in the Customer Contract.

8.3 Preventative Maintenance
If so provided in the Customer Contract, the Contractor will provide Hardware Maintenance Services in the form of preventative maintenance and will ensure that:

(a) preventative maintenance is carried out in accordance with the requirements of the Customer Contract (including, if applicable, Schedule 9 to the Request); and

(b) preventative maintenance is carried out at the times specified in the Customer Contract (including, if applicable, Schedule 9 to the Request) or otherwise at times when the equipment is either not operational or else at times likely to cause the least possible disruption to the Customer's business and in all cases only by prior arrangement with the Customer.

The Customer will cooperate with the Contractor by providing access to facilities as reasonably necessary to enable the Contractor to provide preventative maintenance to the required standard.

8.4 Remedial Maintenance
If so provided in the Customer Contract, the Contractor will provide Hardware Maintenance Services in the form of remedial maintenance. Where the Contractor is required to provide remedial maintenance, it will, after being notified of a fault condition or possible fault condition in the equipment, promptly restore the equipment to good working order and will, as necessary:

(a) replace or repair parts;

(b) comply with any response times specified in the Customer Contract (including, if applicable, Schedule 9 to the Request);
(c) to the extent practical, implement measures to minimise disruption to the Customer's operations during maintenance work as specified in the Customer Contract (including, if applicable, Schedule 9 to the Request); and

(d) comply with any other requirements as specified in the Customer Contract (including, if applicable, Schedule 9 to the Request).

The Customer will cooperate with the Contractor by providing access to facilities as reasonably necessary to enable the Contractor to provide remedial maintenance to the required standard.

8.5 Storage of Contractor Materials

Unless provided to the contrary in the Customer Contract (including, if applicable, Schedule 9 to the Request), the Contractor may store manuals, tools and test equipment on the Premises as required for the purposes of the Customer Contract. The Customer agrees not to use any such manuals, tools or test equipment without the Contractor's consent.

8.6 Maintenance Records

Where required in the Customer Contract (including, if applicable, Schedule 9 to the Request), the Contractor will keep full records of its Hardware Maintenance Services and will provide copies of those records to the Customer within 5 Business Days of request or within any other period specified in the Customer Contract.

8.7 Third Party Equipment

For the removal of doubt, equipment which is the subject of the Hardware Maintenance Services may consist wholly or partly of hardware or office machines which have not been supplied by the Contractor under the Customer Contract or at all.

9. SERVICE SPECIFIC ISSUES - SUPPLY OF MANAGED SERVICES

9.1 Application of this clause

If the Customer Contract is for the supply of Managed Services, then, without limiting clause 8 this clause 9 forms part of the Customer Contract.

9.2 General Obligations of Successful Respondent

Where the Customer Contract states that the Contractor is to provide Managed Services:

(a) the Contractor agrees to commence the Managed Services on the service commencement date specified in the Customer Contract and to meet the Specification and service levels for the Managed Services during the Term;

(b) the Contractor will be deemed to have knowledge of information that the Contractor could reasonably have obtained during due diligence which it had
the opportunity to conduct prior to the service commencement date (as specified in the Customer Contract), whether or not the Contractor in fact conducted such due diligence;

(c) without limiting the preceding paragraph, the Contractor will be deemed to have made use of any reasonable opportunity provided by the Customer to conduct due diligence prior to the service commencement date (as specified in the Customer Contract); and

(d) unless agreed to the contrary, the Contractor must ensure that technology and work practices used in providing the Managed Services remain consistent with, and reflect, those used by the Contractor in delivering similar services to other government customers at the same time and in similar circumstances.

9.3 Transition In

If a transition plan is contained in the Customer Contract (including, if applicable, Schedule 11 to the Request), then the Contractor will, as necessary:

(a) comply with obligations specified in the transition plan contained in the Customer Contract (including, if applicable, Schedule 11 to the Request) regarding the transfer or management of third party contracts;

(b) comply with the requirements of the transition plan concerning the future role of the Customer’s existing officers, employees and agents, including making offers of employment to such officers, employees and agents;

(c) ensure it is able to deliver the Managed Services from the date stated in the transition plan;

(d) ensure (to the extent practical) that all third party software licences and other relevant third party agreements entered into by the Contractor from the commencement of the transition in process incorporate a term requiring the licensor or third party supplier to consent to novation or assignment of the licence to an alternative service provider or to the Customer itself upon termination of the Managed Services for any reason, with the cost of any increased charges resulting from the inclusion of that term to be borne by the Customer (subject to prior notification to the Customer), unless agreed by the parties to the contrary; and

(e) prepare a procedures manual which, once agreed by the Customer, will form part of the Customer Contract and which, in addition to any other requirements specified in the Customer Contract, will describe how the Contractor will manage the delivery of the Managed Services, including:
   (i) how compliance with the service levels and other performance factors will be measured and met;
   (ii) procedures to identify and rectify failures in the quality of the Managed Services;
   (iii) the acceptance procedure for deliverables supplied pursuant to the Managed Services;
   (iv) how changes to the Managed Services or method of delivery will be identified and met;
   (v) proposed audit requirements; and
(vi) staffing, reporting, planning and supervisory activities normally
undertaken in respect of similar services in similar circumstances.

If no transition plan is contained in the Customer Contract, then the Contractor
will comply with the obligations regarding the transfer or management of third
party contracts which are agreed between the Customer and the Contractor.

9.4 **Service Delivery and Service Level Agreement**

Unless the Customer agrees otherwise in writing, the Managed Services will be
performed in Australia and, in addition:

(a) from the service commencement date specified in the Customer Contract,
the Contractor agrees to provide the Managed Services in accordance with
the service level documentation and any other performance measures
attached to or specified in the Customer Contract;

(b) the Contractor agrees to report to the Customer at monthly intervals (or such
other intervals as are specified in the Customer Contract) and in conformity
with any agreed format, as to the effectiveness of service delivery, including
the extent to which the Managed Services are being or have been adapted
to meet the Customer's changing business needs; and

(c) the Contractor will advise the Customer if it considers the Specification or
service levels should be revised to take account of new functions performed
by the Customer that are outside the scope of the Customer Contract (such
revisions to be implemented, if at all, in accordance with the change control
procedure set out in the Customer Contract).

If the Contractor fails to meet performance requirements for the Managed
Services as specified in the service level documentation or fails to meet other
performance measures specified in Schedule 8 to the Request, the Contractor will
promptly:

(a) investigate the underlying causes of the problem and use all commercially
reasonable efforts to preserve any data indicating the cause of the problem;

(b) advise the Customer of the status of remedial efforts being undertaken with
respect to the underlying cause of the problem.

Compliance by the Contractor with this clause 9.4 will not deprive the Customer
of a right to pursue any other remedy under the Customer Contract arising from
the Contractor's failure to meet its obligations under the Customer Contract.

9.5 **Transition Out**

On termination of the Managed Services for any reason, and subject to any
qualification or provision to the contrary in the Customer Contract, the Contractor
will, if requested by the Customer, assist the Customer in transferring
responsibility for providing the Managed Services either to an alternative service
provider or to the Customer itself and this will include making arrangements for:

(a) the novation or assignment (to the extent practical) of software licences and
any other relevant third party agreements from the Contractor to an
alternative service provider or to the Customer itself, or if the Contractor is
managing third party licences or agreements on behalf of the Customer, the
transfer of management responsibility in respect of such licences and/or
agreements from the Contractor to an alternative service provider or to the Customer itself, with the cost of any new or increased charges to be borne by the Customer (subject to prior notification to and agreement from the Customer) unless agreed by the parties to the contrary;

(b) an offer to sell to the alternative service provider or to the Customer itself at fair market value any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Managed Services;

(c) the transfer of the Customer’s data to an alternative service provider and/or to the Customer itself; and

(d) the granting by the Contractor to an alternative service provider and/or to the Customer itself of access to all material developed specifically for the Customer as part of the Managed Services regardless of the manner of storage.

For the purposes of clause 9.5:

(a) the Contractor is not required to assign any Intellectual Property Rights in such material; and

(b) the Customer must agree to comply with any reasonable security and confidentiality requirements specified by the Contractor in respect of access to such material.

Throughout the transition out process, the Contractor will continue to provide the Managed Services at the Customer Contract Price if and to the extent requested by the Customer.

If and to the extent specified in the Customer Contract, the Contractor’s assistance under this clause 9.5 will be the subject of a transition charge.

This clause 9.5 survives termination or expiry of the Customer Contract.

10. SERVICE SPECIFIC ISSUES - SUPPLY OF SOFTWARE DEVELOPMENT SERVICES

10.1 Application of this clause

If the Customer Contract is for the supply of Software Development Services, then this clause 10 forms part of the Customer Contract.

10.2 Preparation of Project Plan

The Contractor will prepare a project plan in relation to the Software Development Services (including relevant milestones) and submit it to the Customer for approval by the date specified in the Customer Contract.

10.3 Approval of Project Plan

The Customer will promptly review the project plan submitted by the Contractor. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the requirements of the Customer Contract.

The Customer must approve the project plan when satisfied that it is consistent with the requirements of the Customer Contract. The project plan must be
approved by the date specified in the Customer Contract or, if applicable, before the expiry of any extended period which is specified in the Customer Contract or which is otherwise agreed between the parties.

The Customer is not required to approve the project plan if it is inconsistent with the requirements of the Customer Contract. The Customer will provide the Contractor with details as to why it considers the project plan is inconsistent with the requirements of the Customer Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the project plan is due.

The project plan will, when approved by both parties, become part of the Specification.

10.4 Preparation of Design Specification

The Contractor will prepare a detailed specification in relation to the Developed Software (‘Design Specification’) and submit it to the Customer for approval by the date specified in the Customer Contract. The Design Specification will give a technical explanation of how the functions in the Specification will be met. To the extent reasonably required, the Customer will assist the Contractor in the preparation of the Design Specification.

10.5 Approval of Design Specification

The Customer will promptly review the Design Specification submitted by the Contractor. The Contractor will accommodate any requests for alteration reasonably made by the Customer in order to satisfy the Specification.

The Customer must approve the Design Specification when satisfied that either it conforms with the Specification or that any departures from the Specification are reasonable in the circumstances. The Design Specification must be approved by the date specified in the Customer Contract or, if applicable, before the expiry of any extended period which is permitted in the Customer Contract or which is otherwise agreed between the parties.

The Customer is not required to approve the Design Specification if it is inconsistent with the requirements of the Customer Contract. The Customer will provide the Contractor with details as to why it considers the Design Specification is inconsistent with the requirements of the Customer Contract and provide the Contractor with an opportunity to rectify that inconsistency prior to the date upon which approval of the Design Specification is due.

The Design Specification will, when approved by both parties, become part of the Specification.

10.6 Methodology

The Contractor will fully document the development process and will:
(a) manage the Software Development Services;
(b) take timely corrective action prior to Acceptance, where this is required, in accordance with the agreed methodology;
(c) take timely corrective action prior to Acceptance where the Developed Software is not performing in accordance with the Specification;
(d) ensure concurrent development and supply of user documentation as specified in the Customer Contract; and

(e) ensure that the Developed Software is written and documented in a way which would enable future modification by a competent developer without further reference to the Contractor.

10.7 Source Code

Where the Customer Contract states that ownership of the Developed Software is to be retained by the Contractor, the Contractor agrees if so requested by the Customer to enter into an escrow arrangement in the form specified in Schedule 14 to the Request (or such alternative form as the Customer, acting reasonably, considers to be of similar effect in all material respects), unless it is expressly stated in the Customer Contract that the source code is not to be placed in escrow.

Where the Customer Contract states that ownership of the Developed Software is to pass to the Intellectual Property Owner, the Contractor will deliver the source code to the Intellectual Property Owner in accordance with the project plan. For the removal of doubt, the Contractor must in these circumstances supply the Intellectual Property Owner with all documentation that was developed in conjunction with the Developed Software and provide the Intellectual Property Owner with the source code and other materials required to support the Software and otherwise ensure that it may be modified by a competent software developer without further reference to the Contractor in the future.

10.8 Use Prior to Acceptance

The Customer may not use the Developed Software in production prior to Acceptance unless so specified in the Customer Contract.

11. SERVICE SPECIFIC ISSUES - SOFTWARE LICENSING

11.1 Application of this clause

If the Customer Contract is for the licensing of Software, then this clause 11 forms part of the Customer Contract.

11.2 Licence Rights

Unless otherwise stated in the Customer Contract, the Contractor grants the Customer a non-exclusive licence at the charges specified in the Customer Contract to:

(a) copy the Licensed Software into machine readable form to the extent permitted under the Copyright Act 1968 (Cth);

(b) use the Licensed Software on the hardware platform/operating system combination, subject to any licence conditions specified in the Customer Contract;

(c) use the documentation supplied by the Contractor with the Licensed Software;
(d) make such number of copies of the Licensed Software as is specified in the Customer Contract; and

(e) transfer the licence to one or more Public Authorities which are carrying out the same functions as the Customer, subject to prior written notice to the Contractor and subject further to the other agency consenting to the terms of the licence.

Subject to clause 11.2(e), the licence granted to the Customer is non-transferable unless specified to the contrary in the Customer Contract.

The licence terms specified in this clause 11.2 will be supplemented (and, to the extent of any inconsistency, overridden) by licence terms contained in Schedule 15 to the Customer Contract. Such licence terms contained in Schedule 15 to the Customer Contract will not, however, have the effect of supplementing or overriding any provision of the Customer Contract apart from the provisions of this clause 11.2. For the removal of doubt, if the Contractor seeks to supplement or override any clause other than clause 11.2 by reference to licence terms contained in or appended to the Customer Contract, the Customer Contract referable to the other clauses must make specific reference to the relevant provisions of those licence terms.

11.3 Period of Licence

Unless earlier terminated in accordance with the Customer Contract or otherwise surrendered by the Customer, the licence remains in force for the period specified in the Customer Contract.

11.4 Protection and Security

The Customer will:

(a) if and to the extent required by the Customer Contract, maintain records of the location of all copies of the Licensed Software;

(b) refrain from altering or removing a copyright statement or other notice of ownership of Intellectual Property Rights which accompanies the Licensed Software; and

(c) ensure that, prior to disposal of any media, any Licensed Software contained on it has been erased or destroyed.

11.5 Change of Designated Equipment

The Customer Contract may specify that use of the Licensed Software by the Customer is restricted to a particular processor.

If use of the Licensed Software is restricted to a particular processor, the Customer may, subject to any alternative licence conditions specified in the Customer Contract and subject further to obtaining the prior written consent of the Contractor (such consent not to be unreasonably withheld):

(a) transfer the Licensed Software to an alternative processor of substantially the same capacity and performance standards; and

(b) use the Licensed Software on any back-up hardware while the specified hardware is for any reason temporarily inoperable.
11.6 Protection of Contractor's Rights

The Customer agrees not to do anything that would prejudice the Contractor's right, title or interest in the Licensed Software.

11.7 Termination of Licence

Within 30 days (or such other period as may be specified in the Customer Contract) after termination of the licence, the Customer will destroy or return to the Contractor all copies of the Licensed Software and all related documentation, save that the Customer may (unless specified to the contrary in the Customer Contract) retain a copy of the Licensed Software and its related documentation for archival purposes only. The use of Licensed Software for archival purposes will be subject to the restrictions specified in the Customer Contract.

11.8 Escrow of Source Code

If so specified in the Customer Contract, the Contractor will enter into an escrow arrangement in respect of the source code of the Licensed Software, substantially in the form set out in Schedule 14 to the Request (or such alternative form as the Customer, acting reasonably, considers to be of similar effect in all material respects), and with the escrow agent named (if any) in the Customer Contract.

11.9 No application to Software Leasing

The Customer Contract does not apply in relation to the leasing of software to the Customer.

11.10 Third Party Software

Unless and to the extent stated to the contrary in the Customer Contract, where the Customer acquires Third Party Software in connection with the Customer Contract:

(a) the Customer will enter into a licence direct with the third party licensor as required; and

(b) the Contractor will not be liable for loss or damage suffered by the Customer arising out of a deficiency in the Third Party Software or a breach by the third party of its obligations under the third party licence, except to the extent that the Customer acquired the Third Party Software on the Contractor's recommendation as part of a Service, solution or other deliverable supplied by the Contractor pursuant to the Customer Contract.

12. SERVICE SPECIFIC ISSUES - SUPPLY OF SOFTWARE SUPPORT SERVICES

12.1 Application of this clause

If the Customer Contract is for the supply of Software Support Services, then this clause 12 forms part of the Customer Contract.
12.2 Commencement of Support

The Software Support Services will commence on the date specified in the Customer Contract and will be renewable as specified in the Customer Contract.

For the removal of doubt, if the Services relate to Software supplied under the Customer Contract, then the initial term of the Software Support Services will not commence until the expiry of the relevant warranty period for the Software unless specified to the contrary in the Customer Contract.

Defect correction, the implementation of updates and new releases and the provision of help desk services will be provided free of charge during the warranty period unless specified to the contrary in the Customer Contract (including, if applicable, Schedule 10 to the Customer Contract).

12.3 Correction of Defects

Where the Customer identifies and reports a defect in the Licensed Software subsequent to the commencement of the Software Support Services, the Contractor will as soon as possible (and, where relevant, within the response times specified in the Customer Contract, including, if applicable, Schedule 10 to the Customer Contract) provide either defect correction information, a workaround or other remedial services as are necessary to restore the Licensed Software to compliance with its Specification.

12.4 Other Support Services

Unless specified to the contrary in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), the Software Support Services will include, in addition to defect correction pursuant to clause 12.3, ensuring:

(a) by responding to the Customer's notification of defects or by acting in a manner otherwise specified in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), that the Software remains in conformity with the operating specifications or any other specifications, standards or service levels described in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract);

(b) the provision of a help desk service, full particulars of which will be as specified in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract); and

(c) subject to any qualification expressed in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), the correction of documentation so that it is at all times up to date.

12.5 Service Response Times

The Contractor will respond to a request from the Customer for Software Support Services within the timeframes, and subject to any conditions, specified in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract).
12.6 Exclusions

Unless specified to the contrary in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract), the Software Support Services do not include services involving correction of defects caused by:

(a) operation of the Software in a manner which contravenes the Customer's obligations as specified in the Customer Contract;

(b) failure by the Customer to operate the Software in accordance with its Specification or any other specifications or standards which have been made known by the Contractor to the Customer;

(c) use by the Customer of the Software in an information technology environment other than that provided for in the Specification;

(d) failure by the Customer to use the Software in conformity with user documentation provided by the Contractor under the Customer Contract;

(e) correction of errors or defects caused by the reproduction or adaptation of the Software by the Customer pursuant to the Copyright Act 1968 (Cth) section 47E or 47F;

(f) equipment maintenance; or

(g) any other service expressly excluded in the Customer Contract (including if applicable, Schedule 10 to the Customer Contract).

For the removal of doubt, the Customer Contract (including if applicable, Schedule 10 to the Customer Contract) may expand, reduce or otherwise vary the foregoing list of excluded services.

12.7 Updates and New Releases

Updates and new releases will be made available by the Contractor to the Customer on the terms specified in the Customer Contract. Notwithstanding the foregoing, the Contractor will provide any update or new release at no cost where the Contractor or third party owner makes such updates or new releases generally available to other government customers under similar circumstances at no cost. Where there is a cost, the charges and level of support applicable to the update or new release will be as specified in the Customer Contract.

The Customer is not obliged to accept an update or new release offered by the Contractor pursuant to this clause. If the Customer rejects the offer of an update or new release, the Contractor must continue to maintain the version of the Licensed Software which immediately precedes the most recent update or new release issued by the Contractor from time to time for a period commencing on the date upon which the rejected update or new release was formally offered by the Contractor to the Customer and ending on the expiry of the Term or any earlier date specified by the Customer.

13. SERVICE SPECIFIC ISSUES - SUPPLY OF SYSTEMS INTEGRATION SERVICES

13.1 Application of this clause

If the Customer Contract is for the supply of Systems Integration Services, then this clause 13 forms part of the Customer Contract.
13.2 **Hardware Componentry**

To the extent that the System comprises equipment, the equipment will be supplied in accordance with the requirements of clause 7, unless and to the extent specified in the Customer Contract (including if applicable, Schedule 2 to the Customer Contract).

13.3 **Software Componentry**

To the extent that the supply of the System involves the development of Software, such development will take place in accordance with clause 10 unless and to the extent specified in the Customer Contract (including if applicable, Schedule 2 to the Customer Contract).

To the extent that the supply of the System requires the licensing of Software from the Contractor to the Customer, the Software will be supplied in accordance with the provisions of clause 11 unless and to the extent specified in the Customer Contract (including if applicable, Schedule 2 to the Customer Contract).

To the extent that the supply of the System requires the licensing of Third Party Software from a third party licensor direct to the Customer, and except as specified to the contrary in the Customer Contract (including if applicable, Schedule 1 to the Customer Contract), the Contractor will procure for the Customer a non-exclusive, non-transferable licence to use such Third Party Software on terms consistent with the Customer's requirements as set out in the Customer Contract.

13.4 **System Warranty**

In addition to and notwithstanding warranties otherwise provided by the Contractor to the Customer under the Customer Contract, and notwithstanding any warranties provided by a third party to the Customer under a direct licence from the third party to the Customer or by reason of an assignment of warranty pursuant to clause 19.5, the Contractor warrants that, subject to clause 13.5, for a period of 90 days from Acceptance (or such other period as is specified in the Customer Contract including, if applicable, Schedule 1 to the Customer Contract):

(a) the System is free from defects;

(b) all components of the System will interact with each other in accordance with the Specification; and

(c) the System as installed will interact with the Customer's existing information technology environment as required by the Specification.

13.5 **Exclusions from System Warranty**

The Contractor does not warrant that:

(a) the System will perform free of minor errors or uninterrupted;

(b) the System will operate in combination with other systems or software selected for use by the Customer which are not set out in the Specification;

(c) functions contained in the System will meet the Customer’s requirements unless such requirements are expressly set out in the Specifications; or
(d) the Contractor will correct all minor and immaterial System errors.

The warranty in clause 13.4 only applies where:

(a) the System is used in accordance with the documentation provided to the Customer by the Contractor; and

(b) there have been no unauthorised modifications to the System.

14. SERVICE SPECIFIC ISSUES - SUPPLY OF TELECOMMUNICATIONS SERVICES

14.1 Application of this clause

If the Customer Contract is for the supply of Telecommunications Services, then this clause 14 forms part of the Customer Contract.

14.2 Provision of Services

Where the Customer Contract provides that the Contractor is to supply Telecommunications Services, the Contractor will provide the Telecommunications Services, including related Hardware or Software as specified in the Customer Contract and in accordance with the pricing stated in Schedule 3 to the Customer Contract.

Telecommunications Services supplied by the Contractor pursuant to this clause will be provided in accordance with any additional terms and conditions agreed by the Customer and the Contractor and set out in the Customer Contract.

The Contractor must obtain all permissions, licences and powers necessary in order to provide a Telecommunications Service within the time prescribed by the Customer Contract.

14.3 Interoperability

To the extent specified in the Customer Contract, the Contractor will ensure that the Telecommunications Services provide interoperability and inter-working with and between:

(a) current and future Customer telecommunications systems and networks;

(b) other Customer service providers, switch vendors, network managers and Customer premises equipment providers; and

(c) current and future telecommunications systems including both public and private networks.

15. SERVICE SPECIFIC ISSUES - ACCEPTANCE TESTING

15.1 Application of this clause

If the Customer Contract involves Acceptance testing, then, without limiting clause 10, this clause 15 forms part of the Customer Contract.
15.2 Date of Acceptance

The Customer will accept a Service on the date the tests have been successfully completed in accordance with the requirements for Acceptance testing as specified in the Customer Contract (including if applicable, Schedule 13 to the Request).

Where the Customer Contract does not specify that Acceptance tests are required the Service will be deemed to have been accepted on the date the Contractor delivers or (if installation is involved) installs the Service in accordance with all relevant Customer Contract stipulations.

15.3 Late notification of tests

If no Acceptance tests are specified in the Customer Contract (including if applicable, Schedule 13 to the Request), the Customer may (if so specified in the Customer Contract) stipulate reasonable tests to be conducted prior to Acceptance being deemed pursuant to clause 15.2.

15.4 Customer Cooperation

To the extent specified in the Customer Contract (including, if applicable, Schedule 13 to the Request) and otherwise as reasonably requested by the Contractor, the Customer will provide materials and facilities reasonably necessary for the conduct of the tests, including power, environment, consumables and data media.

15.5 Delays Caused by the Customer

Should the Customer cause a delay in the performance of the Acceptance tests for any reason, the Customer will agree to an extension of time for completing the tests that is reasonable in the circumstances. The Customer will be responsible for the reasonable additional costs incurred by the Contractor in these circumstances.

15.6 Test Procedures

The parties will conduct the Acceptance tests, and discharge their respective responsibilities, in the manner specified in the Customer Contract (including, if applicable, Schedule 13 to the Request).

15.7 Certificate of Acceptance

Where the Customer Contract provides for Acceptance testing as a condition of payment, the Customer will issue a certificate of Acceptance within 5 Business Days of the date of Acceptance or within any other period specified in the Customer Contract (including, if applicable, Schedule 13 to the Request). The certificate of Acceptance will indicate the actual date of Acceptance and will be in the form specified in the Customer Contract (including, if applicable, Schedule 13 to the Request). The certificate of Acceptance constitutes an acknowledgment that the Customer Contract requirements in respect of the tested Service or Product have been satisfied as at the date of Acceptance.
15.8 Failure

If the Customer concludes that a Service and/or Product has failed an Acceptance test, the Customer must set out the basis of this conclusion in writing. Subject to consideration of any explanation provided by the Contractor in respect of the failure, the Customer may:

(a) waive the requirement for the test in question to be satisfactorily completed;
(b) require that further reasonable tests be conducted at the Contractor's expense, such tests to be satisfactorily completed as a condition of Acceptance within 20 Business Days of the scheduled commencement date or within such other period as the parties agree;
(c) conditionally accept the Service or Product, subject to the Contractor agreeing to deliver a work-around or to otherwise rectify any outstanding deficiency within a set time frame; or
(d) subject to the Customer having provided the Contractor with at least one opportunity to conduct further tests pursuant to clause 15.8(b), reject the Service or Product concerned, whereupon the Contractor will be in breach of the Customer Contract. Without limiting any other remedy which may be available in these circumstances, the Customer may require the removal of the rejected Product or any materials associated with the rejected Service.

15.9 Supplementary Tests

If the Customer reasonably concludes at any time prior to Acceptance that there is a reasonable likelihood of non-compliance with the Acceptance criteria, it may require the Contractor to carry out supplementary tests to establish whether the relevant Service or Product in fact complies with the Acceptance criteria.

The Contractor will pay the costs of any such supplementary tests which demonstrate the Service or Product does not comply with the Acceptance criteria. Otherwise, the costs of such tests will be borne by the Customer.

The Contractor will not be responsible for delays caused by supplementary tests unless those tests demonstrate the Service or Product does not comply with the Acceptance criteria.

The following clauses apply to all contracts

16. DELIVERY MANAGEMENT

16.1 Customer Supplied Items

The Customer will provide the items specified in the Customer Contract. Such items will, to the Customer's reasonable knowledge and belief, be fit for any purpose stated in the Customer Contract.

16.2 Facilities

The Customer warrants that:
(a) any facilities (including items of equipment and software) which it makes available to the Contractor will comply with the Specifications and any other standards set out in the Customer Contract; 

(b) facilities made available to the Contractor will be maintained in the manner specified (if at all) in the Customer Contract; and

(c) should a facility which is provided by the Customer under this clause fail at any time to meet the requirements specified in the Customer Contract, then without limiting any other rights of the Contractor, the Customer will promptly take reasonable steps to ensure that the facility meets those requirements as soon as practicable.

16.3 Site Preparation

To the extent specified in the Customer Contract, the Customer will be responsible for site preparation to enable delivery and implementation of a Product and/or the performance of a Service.

17. ACCESS

17.1 Access and Records

Subject to the Contract Authority, the Customer or both (as applicable):

(a) giving reasonable prior notice to the Contractor; and

(b) complying with all reasonable directions and procedures of the Contractor relating to occupational health, safety, security and confidentiality in connection with the Contractor's premises,

the Contractor must allow the Contract Authority, the Customer or both to:

(a) have reasonable access to any premises used or occupied by the Contractor in connection with the Products and/or Services;

(b) have reasonable access to all Records in the custody or control of the Contractor;

(c) examine, audit, copy and use any Records in the custody or control of the Contractor; and

(d) photograph, film or otherwise record anything done by the Contractor in supplying the Products and/or Services, if reasonably required by the Contract Authority, the Customer or both.

The Contractor must keep accurate, complete and current written Records in respect of the Head Agreement and the Customer Contract, including:

(a) if the Customer Contract is for the supply of Products:

(i) the type and quantity of the Products supplied to the Customer;

(ii) the date and time on which the Contractor supplied the Products to the Customer; and

(iii) the place to which the Contractor delivered the Products to the Customer; and

(b) if the Customer Contract is for the supply of Services:
(i) the type of Services, including the separate tasks, supplied to the Customer on each day during the Term;
(ii) the time that the Contractor spent providing the Services on each day during the Term; and
(iii) the name and title of all Contractor Personnel who provided the Services or were responsible for supervising the provision of the Services.

The Contractor must comply with the directions of the Contract Authority and the Customer in relation to the keeping of Records whether those directions relate to the period before or after the expiry of the Term.

The Contractor must keep all Records for at least 7 years after the later of the expiry or termination of the Head Agreement, or the last of the Customer Contracts, as the case may be.

The Contractor must do everything necessary to obtain any third party consents which are required to enable the Contract Authority and the Customer to have access to Records under this clause 17.

17.2 Access to Customer's Premises

The Customer will provide the Contractor with access to the Customer's premises as specified in the Customer Contract to enable the Contractor to fulfil its obligations under the Contract. Access may be temporarily denied or suspended by the Customer, at its sole discretion. Where access is temporarily denied or suspended by the Customer (except in circumstances where access is temporarily denied or suspended due to an investigation into the conduct of the Contractor or the Contractor Personnel), the Contractor will be entitled to an extension of time to complete any obligations which are directly and adversely affected by the denial of access. Without limiting the foregoing, the Customer will, following a temporary denial or suspension of access, permit a resumption of access as soon as practicable.

17.3 Survival of Clause

This clause 17 survives expiration or termination of the Customer Contract.

18. CONTRACTOR PERSONNEL

18.1 Contractor Personnel Generally

The Contractor must ensure that all Contractor Personnel:
(a) are properly qualified and suitable for the tasks that they are to do;
(b) hold all necessary permits, licences and authorities required by law; and
(c) act, in all circumstances and at all times, in a fit and proper manner.

18.2 Specified Personnel

Where Specified Personnel are specified in the Customer Contract as being responsible for the performance of key roles or tasks under the Customer
Contract, the Contractor will provide those individuals to fulfil those tasks. If, notwithstanding this obligation, a specified individual is unavailable at any time during the scheduled performance of these key roles or tasks, the Contractor will promptly advise the Customer and propose a substitute. Any substitute Specified Personnel must be approved by the Customer. The Customer may not unreasonably withhold its approval of a substitute but it may give its approval subject to such conditions as it reasonably considers necessary to protect its interests under the Customer Contract.

18.3 Awards, Workplace Agreements

The Contractor must ensure that the remuneration and terms of employment of all Contractor Personnel for the duration of the Customer Contract will be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry.

18.4 Police Clearance

The Contract Authority or the Customer may request the Contractor, at any time and from time to time, to obtain and provide it with an Australia-wide police clearance in respect of any Contractor Personnel.

The Contractor must comply with that request within thirty (30) Business Days of such request.

If any police clearance evidences that any Contractor Personnel has committed a criminal offence punishable by imprisonment or detention, then the Contract Authority or the Customer may, without prejudice to their other rights under the Customer Contract or Head Agreement, request the Contractor to promptly remove that Contractor Personnel from involvement in the Customer Contract or the Head Agreement as the case requires.

If the Contractor is requested to remove any Contractor Personnel under this clause, the Contractor must, at its own cost, promptly remove that Contractor Personnel from all involvement in the Customer Contract or the Head Agreement as the case may be and arrange for a replacement of that Contractor Personnel.

18.5 Prevention of Paedophilia

The Contractor must ensure that any Contractor Personnel who will be required to, or is likely to, enter a school, completes a confidential declaration before entering the school. The confidential declaration must be in the form provided by the Customer to the Contractor.

The Contractor must ensure that, except with the prior written consent of the Customer, no Contractor Personnel enters a school for the purposes of supplying the Products and/or Services without first having completed a confidential declaration.

The confidential declaration will be deemed to have been re-made by each of the Contractor Personnel on each and every occasion they enter a school.
18.6  Working with Children

If the Services to be provided by the Contractor under the Customer Contract involve "child-related work" (as that term is defined in section 6 of the Working with Children (Criminal Record Checking) Act 2004) ("the Act") then:

(a) all Contractor Personnel who will undertake "child-related work" must provide to the Customer an assessment notice under section 12 of the Act before they commence work under the Customer Contract; and

(b) the Contractor must otherwise at all times comply, and ensure that all Contractor Personnel comply, with the provisions of the Act.

The Customer may require the Contractor to immediately remove any Contractor Personnel from the Premises who do not have a current assessment notice.

A breach of this clause will be deemed an Event of Default which cannot be remedied.

19.  GENERAL WARRANTIES

19.1  Contractor’s General Warranties

Except where the Contractor has otherwise disclosed in writing to the Contract Authority and the Customer, and the Contract Authority and the Customer have given their prior written consent to the matter disclosed, the Contractor warrants in favour of the Contract Authority and the Customer that:

(a) the Contractor has no conflict of interest arising out of the Customer Contract or the Head Agreement;

(b) the Contractor is properly authorised and has the power to enter into the Customer Contract and the Head Agreement and perform the Contractor’s obligations under the Customer Contract and the Head Agreement;

(c) the Contractor’s obligations under the Customer Contract and the Head Agreement are valid and binding and are enforceable against the Contractor;

(d) all information provided by the Contractor to the Contract Authority, the Customer or both in connection with the Customer Contract and the Head Agreement is true and correct;

(e) there is no litigation or arbitration, and there are no administrative proceedings, taking place, pending or threatened against the Contractor which could have a materially adverse effect on the Contractor’s ability to supply the Products and/or Services in accordance with the Customer Contract and the Head Agreement;

(f) neither the Contractor nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention;

(g) except where lawfully excused under the Customer Contract or the Head Agreement, there is nothing that prevents the Contractor from complying with any obligation under the Customer Contract and the Head Agreement; and

(h) none of the Products have been imported from overseas at less than their normal commercial value.
19.2 General Warranties Made Continuously

The warranties made by the Contractor under clause 19.1 are taken to be made continuously throughout the Term.

19.3 Contractor’s Undertakings

The Contractor must:

(a) properly provide for the care, safety, security and protection of:
   (i) the Products, if the Customer Contract is for the supply of Products, until risk in the Products passes to the Customer under clause 20.3;
   (ii) all Records (whether created by the Contract Authority, the Customer, the Contractor or any other person) that are in the custody or control of the Contractor; and
   (iii) all property supplied by the Contract Authority, the Customer or both to the Contractor in connection with the Customer Contract;

(b) promptly notify the Contract Authority or the Customer, as the case requires, if any warranty under clause 19.1 is breached or becomes untrue;

(c) always act ethically in connection with the Head Agreement and the Customer Contract and in accordance with good corporate governance practices;

(d) comply with all State and Commonwealth laws relevant to the Customer Contract and the Head Agreement;

(e) if the Contractor has custody or control of State records, comply with the Contract Authority’s and the Customer’s record keeping plan to the extent necessary under the State Records Act 2000;

(f) cooperate fully with the Contract Authority and the Customer in respect of the administration of the Customer Contract and the Head Agreement;

(g) use its best endeavours to ensure that no Contractor Personnel cause the Contractor to breach the Customer Contract and the Head Agreement; and

(h) not directly or indirectly offer a bribe, gift or inducement to any officer or employee of the Contract Authority or the Customer in connection with the Customer Contract or the Head Agreement.

19.4 Contractor’s Expenses and Equipment

Unless the Customer agrees otherwise in writing, the Contractor must:

(a) pay all out-of-pocket expenses incurred by the Contractor in connection with the Customer Contract including travel expenses, accommodation and subsistence expenses; and

(b) provide everything necessary to enable it to fully comply with all of its obligations under the Customer Contract, subject to the Customer doing everything that is required under the Customer Contract to enable the Contractor to so comply.
19.5 Warranties

The Contractor must give, or must ensure that the Contract Authority and the Customer have the benefit of, any warranties specified in the Customer Contract and the Head Agreement.

The Contractor must do everything necessary to obtain the benefit of all manufacturer and other third party warranties, including any warranties that are obtained by any subcontractor, and must ensure that the Customer has the benefit of those warranties.

A warranty may survive the expiry or termination of the Contract.

19.6 Premises

The Contractor must:

(a) comply with all reasonable directions and procedures of the Customer and the owner or occupier of the Premises relating to occupational health, safety, security and confidentiality in connection with the Premises;

(b) keep the Premises in the same state that the Premises were in before the Contractor commenced supply of the Products and/or Services and regularly remove all rubbish and excess materials resulting from the supply of the Products and/or Services;

(c) leave the Premises in the same state that the Premises were in before the Contractor commenced supply of the Products and/or Services;

(d) do everything reasonably necessary to protect people and property on the Premises;

(e) avoid unnecessary interference with the passage of people and vehicles, and with the operations of the Customer and the owner or occupier of the Premises and their employees, agents and contractors;

(f) prevent any nuisance or disturbance being caused at the Premises resulting from the supply of the Products and/or Services; and

(g) remove any Contractor Personnel from the Premises if the Customer or the owner or lawful occupier of the Premises requires by notice in writing to the Contractor that those Contractor Personnel be removed.

19.7 Cooperation with other Service Providers

(a) Subject to clause 19.7(b), the Contractor must cooperate with any third party service provider appointed by the Customer where this is necessary to ensure the integrated and efficient conduct of the Customer's operations. Without limiting the foregoing, the Contractor must provide such reasonable assistance to other service providers as the Customer may request from time to time, provided that the Contractor will be entitled by prior agreement with the Customer (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such cooperation.

(b) Nothing in clause 19.7 will require the Contractor to disclose its confidential information to a third party service provider.
19.8 **Data Security**

The Contractor must:

(a) comply with all Customer data security requirements in respect of access to and use of Customer data as specified in the Customer Contract, in addition to any statutory obligation relevant to data security;

(b) prohibit and prevent any Contractor Personnel who does not have the appropriate level of security clearance from gaining access to Customer data;

(c) without limiting clause 19.8(b), use reasonable endeavours to prevent any unauthorised person from gaining access to Customer data; and

(d) notify the Customer immediately, and comply with all directions of the Customer, if the Contractor becomes aware of any contravention of the Customer's data security requirements.

19.9 **Use of Chlorofluorocarbons**

The Contractor must not, in the provision of the Products and/or Services, use products, materials or substances which contain, or were manufactured with, chlorofluorocarbons.

20. **ACCEPTANCE**

20.1 **Payment before Acceptance**

Despite any other provision of the Customer Contract, if the Customer pays the Price for Products before the Customer has accepted the Products, then the Contractor will hold that payment on trust for the Customer until:

(a) the Customer accepts the Products under clause 20.2; or

(b) the Customer rejects the Products, in which case the Contractor will immediately refund the Price for the rejected Products to the Customer.

20.2 **Acceptance of Products**

Neither the delivery of the Products by the Contractor to the Customer nor payment of the Price by the Customer to the Contractor constitutes acceptance of the Products by the Customer.

The Customer may reject the Products by giving a notice of rejection to the Contractor within 10 Business Days after the delivery of the Products to the Customer if:

(a) the Products are Faulty Products; or

(b) the Products are not supplied in full; or

(c) the Customer is entitled to reject the Products under the *Sale of Goods Act 1895*.

The Customer is taken to have accepted the Products only if the Customer:

(a) notifies the Contractor that the Products have been accepted; or

(b) does not reject the Products under this clause 20.2.
20.3 Property, Delivery and Risk

Risk in the Products passes to the Customer on delivery of the Products to the Customer in accordance with the Customer Contract.

Property in the Products passes to the Customer on acceptance of the Products by the Customer under clause 20.2.

Property and risk in any Products removed by the Contractor or returned to the Contractor re-passes to the Contractor at the time the Products are removed or returned.

20.4 Defects in Products

If, before or after acceptance of the Products under clause 20.2, the Customer finds that any Products are Faulty Products, then the Customer may by notice in writing to the Contractor:

(a) reject the Faulty Products, in which case:
   (i) the Customer must provide a reason or reasons for rejection, if requested by the Contractor;
   (ii) the Contractor must immediately remove the Faulty Products at the Contractor’s cost and refund the Price for the Faulty Products if already paid; and
   (iii) the Customer may purchase from another supplier substitute goods which in the opinion of the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Products.

   If the Customer purchases substitute goods:

   (A) the Customer does not have to take delivery of, or pay the Price for, the Products; and

   (B) the Contractor must reimburse the Customer (as applicable) for:

   (i) any amount by which the cost of substitute goods exceeds the Price for the Products; and

   (ii) the Customer’s reasonable costs and expenses resulting from having to purchase substitute goods,

   within 10 Business Days from the date on which the Customer (as applicable) gives the Contractor an invoice for those costs; or

(b) require the Contractor to replace the Faulty Products with goods of the same kind and quality as the Products; or

(c) require the Contractor to repair or rectify the Faulty Products.

Clause 20.4 (a) does not apply if the Products were subject to Acceptance testing under clause 15 or if:

(A) the Customer examined the Products before acceptance of the Products under clause 20.2;

(B) that examination ought to have revealed that the Products were Faulty Products; and

(C) the Customer accepted the Faulty Products under clause 20.2.
20.5 Reasonable Time
If the Customer requires the Contractor to replace, repair or rectify the Faulty Products under clauses 20.4 (b) or 20.4 (c), then the Contractor must:

(a) do so within any reasonable time stipulated by the Customer; and

(b) reimburse the Customer for the Customer’s reasonable costs and expenses resulting from not having the use of the Products while the Faulty Products are being replaced, repaired or rectified.

20.6 Remedies for Defects in Products
If the Contractor fails to comply with the Customer’s notice under clause 20.4, then the Customer may do any one or more of the following:

(a) return the Faulty Products to the Contractor at the Contractor’s cost;

(b) hold the Faulty Products as security for the performance of the Contractor’s obligations under clause 20.4;

(c) sell the Faulty Products (without being liable to the Contractor in any way for the amount of the sale proceeds) and:

   (i) keep so much of the net sale proceeds as is necessary to recover the Customer’s costs, expenses and losses resulting from the Contractor’s breach of the Customer Contract; and

   (ii) pay the balance of the net sale proceeds to the Contractor,

   (iii) purchase from another supplier substitute goods which in the opinion of the Customer (as applicable) are most suitable, even though such goods may be of a different kind, quantity and quality from the Products.

If the Customer purchases substitute goods:

(A) the Customer does not have to take delivery of, or pay the Price for, the Products; and

(B) the Contractor must reimburse the Customer (as applicable) for:

   (i) any amount by which the cost of substitute goods exceeds the Price for the Products; and

   (ii) the Customer’s reasonable costs and expenses resulting from having to purchase substitute goods,

within 10 Business Days from the date on which the Customer (as applicable) gives the Contractor an invoice for those.

The Customer is not liable to the Contractor for any loss or damage to Faulty Products resulting from the exercise of any right under this clause.

20.7 Sale of Goods Act 1895
The Customer and the Contractor acknowledge that:

(a) the Sale of Goods Act 1895 applies to the Customer Contract; and

(b) to the extent that there is any inconsistency between the Sale of Goods Act and the Customer Contract, and to the extent permitted by law, the Customer Contract applies rather than the Sale of Goods Act.
21. **PAYMENT AND INVOICING**

21.1 **Price**

The Customer must pay to the Contractor the Price in accordance with this clause 21.

21.2 **Variations to Price**

If a formula or method for variation of the Price is specified in the Customer Contract, then the Price may only be varied in accordance with that formula or method.

If no formula or method for variation of the Price is specified in the Customer Contract, then the Price is fixed for the Term and cannot be varied unless agreed by the Customer and the Contractor in writing.

21.3 **Timing of Invoice**

If the time or times at which the Contractor must submit invoices to the Customer is or are specified in the Customer Contract, then the Contractor must submit invoices at that time or those times.

If no time or times at which the Contractor must submit invoices to the Customer is or are specified in the Customer Contract, then the Contractor must submit invoices to the Customer at a time or times agreed between the Customer and the Contractor, provided that the Contractor must not submit any invoice later than 20 Business Days after the expiration or termination of the Customer Contract.

21.4 **Invoices**

An invoice given by the Contractor to the Customer must:

(a) be set out in a manner that clearly identifies which Products and/or Services the invoice covers and the amount of the Price payable for those Products and/or Services, minus any Discount; and

(b) specify the relevant Order (if applicable).

21.5 **Payment of Invoice**

Subject to clauses 21.4 and 21.8, the Customer must pay the amount specified in an invoice within 30 days after the date the invoice is received if the amount claimed in the invoice is:

(a) properly payable; and

(b) correctly calculated in accordance with the Customer Contract.

21.6 **Method of Payment**

The Customer may pay the amount specified in an invoice:

(a) by cash;
(b) by cheque;
(c) by electronic funds transfer to the account with a financial institution nominated by the Contractor; or
(d) by credit card.

The Contractor must not impose a surcharge on the Customer for payment by credit card.

21.7 **Right to Request Further Details**

If the Customer requests, the Contractor must promptly provide information and documentation sufficient to confirm that the amount specified in an invoice is calculated in accordance with the Customer Contract.

21.8 **No Obligation to Pay**

The Customer has no obligation to make any payment to the Contractor unless and until:

(a) if the Customer Contract is for the supply of Products, the Customer has accepted the Products under clause 20.2 or clause 15.2;
(b) if the Customer Contract is for the supply of Services, the Services have been supplied in accordance with clause 6; and
(c) the Customer is satisfied that no Event of Default has occurred and continues unremedied.

21.9 **Incorrect Invoice before Payment**

If, before payment of an invoice, the Customer or the Contractor finds that the invoice does not comply with clause 21.4 or clause 21.5 and:

(a) an Adjustment arises, then the Contractor must immediately issue an Adjustment Note; and
(b) no Adjustment arises, then the Contractor must immediately issue a correct invoice.

21.10 **Incorrect Invoice after Payment**

If, after payment of an invoice, the Customer or the Contractor finds that the invoice did not comply with clause 21.4 or clause 21.5 and the Customer has paid:

(a) less than the amount that should have been paid and an Adjustment arises, then:
   (i) the Contractor must immediately issue an Adjustment Note; and
   (ii) the Customer must pay the difference to the Contractor within 30 days after the date that the Adjustment Note is received; or
(b) less than the amount that should have been paid and no Adjustment arises, then:
   (i) the Contractor must immediately issue a correct invoice; and
(ii) the Customer must pay the difference to the Contractor within 30 days after the date that the correct invoice is received; or

(c) more than the amount that should have been paid and an Adjustment arises, then the Contractor must:

(i) immediately issue an Adjustment Note; and

(ii) pay the difference to the Customer (including any interest paid under clause 21.12 in respect of that difference) within 30 days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor; or

(d) more than the amount that should have been paid and no Adjustment arises, then the Contractor must:

(i) immediately issue a correct invoice; and

(ii) pay the difference to the Customer (including any interest paid under clause 21.12 in respect of that difference) within 20 Business Days from the time that the Customer calculates the amount of the overpayment unless the Customer elects by notice to the Contractor to offset the difference against any amount subsequently payable by the Customer to the Contractor.

21.11 Timing of Payment

For the purpose of determining the date of payment under clause 21.12 and for the purpose of calculating any Discount applicable under the Customer Contract for settlement of accounts:

(a) if payment is by cash – payment is taken to be made immediately the cash is received by the Contractor;

(b) if payment is by cheque – payment is taken to be made on the date on which the cheque is received by the Contractor;

(c) if payment is by electronic funds transfer – payment is taken to be made at the time the funds are sent electronically; or

(d) if payment is by credit card – payment is taken to be made on the date on which the Customer signs the credit card voucher.

21.12 Failure to Pay

If demanded by the Contractor, the Customer must pay interest on any payment not made by the Customer by the date required by clause 21.5 or any later date for payment agreed by the Contractor.

Interest under clause 21.12 is to be:

(a) calculated from the due date for payment determined under clause 21.12 until (but not including) the date of payment (as determined under clause 21.11); and

(b) at the rate specified in the Customer Contract or, if no rate is specified in the Customer Contract, at the rate payable under the Rules of the Supreme Court on unpaid judgments.
22. **TAXES**

(a) In this clause 22, the expressions “consideration”, “recipient”, “supply”, “tax invoice” and “taxable supply” have the meanings given to those expressions in the *GST Act*.

(b) All sums payable, or consideration to be provided, under the Customer Contract are expressed inclusive of GST.

(c) If GST is imposed on any supply made under the Customer Contract, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

(d) The amount referred to in clause 22(c) must be paid in addition to, and at the same time as, payment for the taxable supply is required to be made under the Customer Contract.

(e) If a GST-inclusive price is charged or varied under the Customer Contract, the supplier must provide the recipient of the supply with a valid tax invoice at or before the time of payment or variation.

(f) If the amount of GST paid or payable by the supplier on any supply made under the Customer Contract differs from the amount of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

(g) All duties, taxes and charges (other than GST) imposed or levied in Australia or overseas in connection with the supply of the Products and/or Services are payable by the Contractor.

23. **INTELLECTUAL PROPERTY RIGHTS**

23.1 **Intellectual Property Rights – Owned by State or Customer**

(a) Unless the Customer Contract states that the Intellectual Property Rights in the New Material are to be owned by the Contractor, then this clause 23.1 forms part of the Customer Contract.

(b) The Intellectual Property Rights in the New Material will be owned by the State unless the Customer Contract provides that they will be owned by the Customer.

(c) The Contractor automatically assigns the entire future Intellectual Property Rights in all New Material to the State or the Customer as the case requires upon their creation.

(d) The State or the Customer grants to the Contractor a revocable, royalty-free, non-exclusive licence to use the New Material to the extent necessary to provide the Services. The licence will terminate on the expiration or termination of the Term.

(e) Unless specified to the contrary in the Request, copyright and property in all Working Papers vest in the State of Western Australia.

(f) The Contractor warrants that all Contractor Personnel:
(i) who are employed or engaged solely for the purposes of the Customer Contract are employed or engaged under written agreements under which all Intellectual Property Rights in any New Material vest in the State or the Customer on the creation of that New Material; and

(ii) who are not employed or engaged solely for the purposes of the Customer Contract are employed or engaged under written agreements under which all Intellectual Property Rights in any work (as defined in the Copyright Act), product or other material created by the Contractor Personnel vest in the Contractor on the creation of that work, product or other material.

23.2 Intellectual Property Rights – Owned by Contractor

(a) Where the Customer Contract states that the Intellectual Property Rights in the New Material are to be owned by the Contractor, then this clause 23.2 forms part of the Customer Contract.

(b) The Customer acknowledges that the entire future Intellectual Property Rights in all New Material are to be owned by the Contractor upon their creation.

(c) The Contractor:

(i) grants to the Customer an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the New Material during the remainder of the duration of the Intellectual Property Rights in that New Material; and

(ii) must, if a third party owns Moral Rights in any New Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the Customer to use the New Material without regard to the third party’s Moral Rights.

(d) The licence granted under clause 23.2 (c) extends to all Working Papers.

23.3 Existing Material - Licence

Nothing in clause 23.1 or 23.2 (as applicable) affects the ownership of any Intellectual Property Rights in any Existing Material.

The Contractor:

(a) grants, and the Contractor must ensure that any other owner of any Intellectual Property Rights in any Existing Materials, to the State or the Customer in writing, an irrevocable, perpetual, royalty-free, non-exclusive licence to exercise any or all of the rights of an owner of Intellectual Property Rights in the Existing Material during the remainder of the duration of the Intellectual Property Rights in that Existing Material; and

(b) must, if a third party owns Moral Rights in any Existing Material, obtain a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the State or the Customer to use the Existing Material without regard to the third party’s Moral Rights.
23.4 Warranty

The Contractor warrants that:

(a) the Contractor has the right to grant the licences granted under clause 23.3 (a);

(b) no Intellectual Property Rights or Moral Rights in any Material is or will be owned by any third party unless:

(i) if a third party owns any Intellectual Property Rights in the Material, the Contractor has obtained a written licence from the third party owner to the same effect as the licence referred to in clause 23.3 (a); and

(ii) if a third party owns Moral Rights in the Material, the Contractor has obtained a written consent and waiver from the third party owner in relation to his or her Moral Rights to enable the State or the Customer to use the Material without regard to the third party’s Moral Rights;

(c) the Material will not infringe the Intellectual Property Rights or Moral Rights of any third party.

23.5 Intellectual Property Rights Indemnity

The Contractor indemnifies and will keep indemnified the Contract Authority, the Customer, the State of Western Australia and all their respective officers, employees and agents from and against all costs, losses, expenses, actions, suits, demands, claims, damages and other liabilities resulting from the Contractor’s failure to comply with this clause 23, including any breach of warranty under clauses 23.1 (if applicable) and 23.4, or otherwise resulting from the actual or alleged infringement of the Intellectual Property Rights or the Moral Rights of any third party by the Contractor.

23.6 Continuing obligation

The obligations of the Contractor under this clause 23 are continuing obligations and survive expiration or termination of the Customer Contract.

24. CONFIDENTIALITY

24.1 Contract Disclosure

The Contract Authority, the Customer or both may publicly disclose:

(a) the identity of the Contractor;

(b) the value of any Customer Contract; and

(c) a general description of the Products and/or Services supplied under any Customer Contract.

In relation to each of:

(a) a Customer Contract;

(b) the Head Agreement; and
(c) information held or compiled by the Contract Authority, the Customer or the State of Western Australia in relation to a Customer Contract or the Products and/or Services supplied under a Customer Contract,

the Contractor acknowledges that:

(d) each is subject to the Freedom of Information Act 1992; and

(e) any or all of them may be disclosed by the Contract Authority, the Customer or the State of Western Australia in response to a request made under section 275 of the Personal Property Securities Act 2009 (Cth), or otherwise as required by that Act.

24.2 Confidentiality

The Contractor must keep the Contract Authority’s and the Customer’s Confidential Information confidential. The Contractor must not use or disclose to any person the Contract Authority’s or the Customer’s Confidential Information except:

(a) where necessary for the purpose of supplying the Products and/or Services; or

(b) as authorised in writing by the Contract Authority or the Customer (as applicable); or

(c) to the extent that the Confidential Information is public knowledge (other than because of a breach of this clause by the Contractor); or

(d) as required by any law, judicial or parliamentary body or governmental agency; or

(e) when required (and only to the extent required) to the Contractor’s professional advisers, and the Contractor must ensure that such professional advisers are bound by the confidentiality obligations imposed on the Contractor under this clause 24.2.

24.3 Return of Confidential Information

Except to the extent that the Contractor is required by law to retain any Records, the Contractor must return all Records containing the Contract Authority’s and the Customer’s Confidential Information immediately at the expiration or termination of the Customer Contract or the Head Agreement.

24.4 Publicity

Unless:

(a) the Contract Authority or the Customer gives its prior written consent; or

(b) the Contractor is required by law to do so,

the Contractor must not:

(a) use a Customer Contract or Head Agreement or the Contract Authority’s or the Customer’s name or logo; or

(b) use the name or logo of any Public Authority specified in a Customer Contract or Head Agreement for the purposes of this clause; or
(c) refer to the Contractor’s association with the State of Western Australia or the Government of Western Australia which results from a Customer Contract or Head Agreement; or

(d) make any statement concerning a Customer Contract or Head Agreement, in any publication, advertisement or media release.

The Contract Authority may use a Customer Contract and the Contractor’s name and logo for reasonable promotional or publicity purposes at the Customer’s discretion, but if the Customer uses the Customer Contract or the Contractor’s name or logo for such purposes, then the Customer must acknowledge the role of the Contractor to the extent that is reasonable in the circumstances.

The Contract Authority may use the Head Agreement and the Contractor’s name and logo for reasonable promotional or publicity purposes at the Contract Authority’s discretion, but if the Contract Authority uses the Head Agreement or the Contractor’s name or logo for such purposes, then the Head Agreement must acknowledge the role of the Contractor to the extent that is reasonable in the circumstances.

25. PRIVACY

(a) The Contractor agrees to comply with its obligations (if any) under or arising pursuant to the Privacy Act 1988 (Cth) to the extent relevant to a Customer Contract and Head Agreement.

(b) The Contractor also agrees to comply with:

(i) such other Commonwealth, State or Territory legislation related to privacy which is relevant to a Customer Contract and Head Agreement;

(ii) any directions made by a Privacy Commissioner relevant to a Customer Contract and Head Agreement;

(iii) any privacy procedures stated in a Customer Contract and Head Agreement; and

(iv) any other reasonable direction relating to privacy which is given by the Customer or Contract Authority.

(c) If the Contractor is exempt from compliance with the Privacy Act 1988 (Cth) because its annual turnover is less than the prescribed threshold, and if the Contractor is not subject to an approved privacy code, the Contractor must comply with the Australian Privacy Principles set out in the Privacy Act 1988 (Cth) as if it were required to comply with that legislation.

26. INSURANCE

26.1 Customer Contract Insurance Requirements

The Contractor must take out and maintain insurance in relation to all insurable liabilities of the Contractor under the Customer Contract as specified in the Customer Contract.

The insurance required under this clause 26.1 must be on the terms, for the period of time and for the amounts specified in the Customer Contract.
26.2 **Head Agreement Insurance Requirements**

The Contractor must take out and maintain insurance in relation to all insurable liabilities of the Contractor under the Head Agreement as specified in the Head Agreement.

The insurance required under this clause 26.2 must be on the terms, for the period of time and for the amounts specified in the Head Agreement.

26.3 **Reputable and Solvent Insurer**

Any policy of insurance taken out by the Contractor must be taken out with a reputable and solvent insurer acceptable to the Contract Authority and the Customer which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company.

26.4 **Maintenance of Insurance**

The Contractor must:

(a) punctually pay all premiums and amounts necessary for effecting and keeping current the insurance required under clauses 26.1 and 26.2;

(b) not vary or cancel any insurance required under clauses 26.1 and 26.2 or as otherwise required under the Customer Contract or the Head Agreement or allow it to lapse during the Term of either of them as the case may be or otherwise do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse a claim; and

(c) without limiting clause 26.4(b), promptly reinstate any insurance required under clauses 26.1 or 26.2 if it lapses or if cover is exhausted.

26.5 **Evidence of Insurance**

The Contractor must give to the Contract Authority or the Customer as the case requires sufficient evidence of the insurances required under clauses 26.1 or 26.2 as the case requires (including, if requested, a copy of any policy) and provide a certificate of currency of insurance as requested by the Contract Authority or the Customer as the case requires at any time.

26.6 **Failure to Prove Insurance**

If the Contractor does not comply with clauses 26.1, 26.3, 26.4 or 26.5 then without limiting any other remedy available to the Contract Authority or the Customer, the Customer may withhold payment of any money due under the Customer Contract to the Contractor until the Contractor has complied.

26.7 **Incidents and claims**

If the Contract Authority or the Customer or the Contractor becomes aware of any event or incident occurring which gives rise or is likely to give rise to a claim under any insurance required under clauses 26.1 or 26.2, it must as soon as
reasonably practicable notify the Contract Authority, the Customer and the Contractor (as applicable) in writing of that event or incident.

Failure to comply with this clause 26.7 will not invalidate or otherwise affect any indemnities, liabilities and releases of the Customer Contract.

26.8 Continuing obligation
The Contractor must maintain the insurance required under clause 26.1 for the period specified in the Customer Contract.

The Contractor must maintain the insurance required under clause 26.2 for the period specified in the Head Agreement.

If no period is specified in the Customer Contract or the Head Agreement, then:

(a) the insurances (except for the professional indemnity insurance) required under clauses 26.1 and 26.2 are to be maintained throughout the Term; and

(b) the professional indemnity insurance (if any) required under clause 26.1 is to be maintained throughout the Term and for a period of 6 years after the expiration or termination of the Customer Contract.

The obligations of the Contractor under this clause 26 are continuing obligations and survive expiration or termination of the Customer Contract and the Head Agreement for so long as the obligations of the Contractor under this clause 26.8 continue.

26.9 No Limitation of Other Liabilities
Nothing in this clause 26 limits the Contractor’s other liabilities under the Customer Contract or the Head Agreement or restricts the Contractor from insuring for sums or risks greater than those required under the Customer Contract or the Head Agreement.

27. GUARANTEES
The Parties acknowledge their respective rights and obligations in relation to any performance guarantee or financial undertaking referred to in the Head Agreement or the Customer Contract.

28. LIABILITY
This clause 28 does not apply to Information and Communications Technology (ICT) contracts. Liability in respect of ICT contracts is subject to any conditions set out in Schedule 1 to the Request.

The liability of either party for breach of the Head Agreement or the Customer Contract or for any other common law or statutory cause of action arising out of the operation of the Head Agreement or the Customer Contract will be determined under the relevant law in Western Australia that is recognised, and would be applied, by the High Court of Australia from time to time.

29. INDEMNITY
This clause 29 does not apply to Information and Communications Technology (ICT) contracts. Liability in respect of ICT contracts is subject to any conditions set out in Schedule 1 to the Request.
The Contractor indemnifies the Contract Authority, the Customer, the State of Western Australia and all their respective officers, employees and agents against all costs, losses, expenses, claims, damages and other liabilities (including, without limitation, legal costs and expenses) as a result of any action, suit, claim, demand or proceeding taken or made by any third party arising from or in connection with:

(a) any breach of contract by the Contractor under a Customer Contract or a Head Agreement;

(b) any wilful, tortious or unlawful act or omission of the Contractor or any Contractor Personnel; or

(c) any breach of a State or Commonwealth law relevant to a Customer Contract or a Head Agreement by the Contractor or any Contractor Personnel.

The Contractor’s liability under the indemnity in this clause 29 will be reduced proportionally to the extent that any costs, losses, expenses, claims, damages or other liabilities result from the negligence of the Contract Authority, the Customer, the State of Western Australia or their respective officers, employees or agents.

The Contract Authority and the Customer agree to use their best endeavours to cooperate with the Contractor, at the Contractor’s cost, in respect of the conduct of any defence, or the agreement of any settlement, of any third party action, suit, claim, demand or proceeding the subject of the indemnity under this clause 29.

30. **CONFLICT OF INTEREST**

If a conflict of interest arises in respect of the Contractor, the Contractor must:

(a) promptly notify the Contract Authority and any relevant Customer that the conflict has arisen and provide full details; and

(b) take reasonable steps in consultation with the Contract Authority and any relevant Customer to remove the conflict.

31. **PERFORMANCE MANAGEMENT**

The parties agree to duly and punctually comply with any performance management requirements contained in the Customer Contract or the Head Agreement.

32. **GOVERNMENT POLICY**

If any obligations relating to Government procurement policies are specified in the Customer Contract or the Head Agreement, then those obligations form part of the Customer Contract and the Head Agreement as the case may be and the Contractor must comply with them.

33. **CONTRACT ADMINISTRATION**

33.1 **Customer’s Representative**

Any person described in the Customer Contract as the Customer’s Representative may act as the representative of the Customer in relation to the Customer Contract.
The Contractor agrees and acknowledges that the Customer’s Representative may administer the Customer Contract and any such administration by the Customer’s Representative will be deemed to be administration by the Customer for the purposes of the Customer Contract.

The Customer may by notice to the Contractor at any time:

(a) vary or terminate the appointment of the Customer’s Representative; and
(b) appoint any other person to act as the Customer’s Representative in relation to the Customer Contract.

33.2 Contract Authority’s Representative

Any person described in the Head Agreement as the Contract Authority’s Representative may act as the representative of the Contract Authority in relation to the Head Agreement.

The Contractor agrees and acknowledges that the Contract Authority’s Representative may administer the Head Agreement and any such administration by the Contract Authority’s Representative will be deemed to be administration by the Contract Authority for the purposes of the Head Agreement.

The Contract Authority may by notice to the Contractor at any time:

(a) vary or terminate the appointment of the Contract Authority’s Representative; and
(b) appoint any other person to act as the Contract Authority’s Representative in relation to the Head Agreement.

33.3 Contractor's Representative

Any person described in the Customer Contract or the Head Agreement as the Contractor's Representative may act as the representative of the Contractor in relation to the Customer Contract or the Head Agreement as the case may be.

The Contract Authority and the Customer agree and acknowledge that the Contractor's Representative may administer the Customer Contract or the Head Agreement as the case may be and any such administration by the Contractor's Representative will be deemed to be administration by the Contractor for the purposes of the Customer Contract or the Head Agreement.

The Contractor may by notice to the Contract Authority and the Customer at any time:

(a) vary or terminate the appointment of the Contractor's Representative; and
(b) appoint any other person to act as the Contractor's Representative in relation to the Customer Contract or the Head Agreement.

33.4 Notices

(a) Each notice or other communication given under the Customer Contract and the Head Agreement:
   (i) must be in writing; and
(ii) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised officer or agent of, that party.

(b) All notices or other communications must be:
   (i) delivered or posted by prepaid post to the address; or
   (ii) sent by email in the form of a PDF file letter to the email address, of the addressee stated in the Customer Contract or Head Agreement or as notified by that party to each other party from time to time.

(c) Subject to clause 33.4 (d), a notice or other communication is taken to be received by the addressee:
   (i) in the case of prepaid post, on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
   (ii) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email; and
   (iii) in the case of delivery by hand, on delivery.

(d) If the notice or other communication is taken to be received on a day which is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

(e) In connection with notices or other communications sent by email:
   (i) only the letter in PDF format attached to the email and any attachments to such letter which are referred to in the letter, will form part of the notice or other communication in accordance with this clause 33.4. Any text in the body of the email or the subject line will not form part of the notice or other communication; and
   (ii) the Contractor must ensure that, in connection with any notices or other communications in connection with the Customer Contract or Head Agreement:
      (A) their firewall and/or mail server (as applicable):
         (1) allows messages of up to 10 MB to be received;
         (2) does not trap any messages in the spam filter which have been sent from the State of Western Australia domain; and
         (3) automatically sends a receipt notification to the sender upon receipt of a message; and
      (B) its systems automatically send a notification message to each of the sender and the recipient when a message is received by the recipient's domain but cannot or will not be delivered to the recipient.

34. DISPUTE RESOLUTION

The parties agree to use reasonable commercial efforts to resolve by negotiation any problem that arises between them under the Customer Contract or the Head Agreement. Neither party will resort to legal proceedings, or terminate the
Customer Contract or the Head Agreement, until the following process has been exhausted, except if it is necessary to seek an urgent interim determination.

If a problem arises (including a breach or an alleged breach) under the Customer Contract or the Head Agreement which is not resolved at an operational level or which is sufficiently serious that it cannot be resolved at the operational level, a party concerned about the problem may notify the other. Management representatives of each of the parties will then endeavour in good faith to agree upon a resolution.

35. TERMINATION

35.1 Termination – Customer Contract

The Customer may terminate the Customer Contract by notice to the Contractor at any time after an Event of Default occurs.

35.2 Consequences of Expiration or Termination – Customer Contract

(a) The expiration or termination of the Customer Contract does not affect any rights, liabilities or obligations of the Customer or the Contractor as a result of anything occurring before the expiration or termination.

(b) On expiration or termination of the Customer Contract, the Contractor must:

(i) complete as soon as practicable, or cease to fulfil, any outstanding Orders as the Customer directs;

(ii) deliver to the Customer all Records as required by the Customer as soon as practicable after the later of the completion of all outstanding Orders under clause 35.2(b)(i) or the date of expiration or termination of the Customer Contract; and

(iii) vacate the Premises as soon as practicable after the later of the completion of all outstanding Orders under clause 35.2(b)(i) or the date of expiration or termination of the Customer Contract.

(c) Without limiting clause 35.2 (b), on termination of the Customer Contract, the Contractor must:

(i) allow the Customer to use at the Customer’s sole risk and without charge for a reasonable period not exceeding 20 Business Days any property of the Contractor which is located on the Premises if required in connection with the Customer Contract, but the Customer must pay the Contractor for any materials or consumables used by the Customer as a result of using that property; and

(ii) in every other respect cooperate with the Customer as reasonably required by the Customer in order to minimise any loss, damage or inconvenience to the Customer resulting from the expiration or termination of the Customer Contract.

(d) The Customer must pay to the Contractor:

(i) the Price for Products and/or Services supplied as a result of the Customer directing the completion of an outstanding Order under clause 35.2 (b)(i); and
35.3 Termination – Head Agreement

The Contract Authority may terminate the Head Agreement by notice to the Contractor at any time after an Event of Default occurs.

35.4 Consequences of Expiration or Termination – Head Agreement

The expiration or termination of the Head Agreement does not affect any rights, liabilities or obligations of the Contract Authority or the Contractor as a result of anything occurring before the expiration or termination.

On expiration or termination of the Head Agreement, the Contractor must:

(a) deliver to the Contract Authority all Records as required by the Contract Authority;
(b) not represent that the Contractor is in any way connected to the Contract Authority;
(c) return all of the Contract Authority’ Confidential Information to the Contract Authority; and
(d) in every other respect co-operate with the Contract Authority as reasonably required by the Contract Authority in order to minimise any loss, damage or inconvenience to the Contract Authority and Customers resulting from the expiration or termination of the Head Agreement.

35.5 Limited Liability - Customer Contract

Other than where the Customer has repudiated the Customer Contract or damages are not an appropriate remedy, if the Customer breaches the Customer Contract, then the remedies of the Contractor are limited to damages.

35.6 Limited Liability – Head Agreement

Other than where the Contract Authority has repudiated the Head Agreement or damages are not an appropriate remedy, if the Contract Authority breaches the Head Agreement, then the remedies of the Contractor are limited to damages.

35.7 Suspension at Any Time - Customer Contract

(a) A Customer may at any time by notice to the Contractor temporarily suspend the Customer Contract (except for clauses 2, 5, 19, 23, 24, 25, 26, 27, 28, 29, 30, 35, 36 and 37) for a period not exceeding 3 months.
(b) The Customer does not need to give a reason for temporary suspension of the Customer Contract.
(c) If the Customer suspends the Customer Contract under this clause and the Contractor is not in default under the Customer Contract, then:
(i) the Customer must pay to the Contractor the Contractor’s costs and expenses directly resulting from the suspension (excluding loss of profits and revenue);

(ii) the Contractor must give the Customer an invoice for the amount payable together with sufficient evidence to support the invoice; and

(iii) the Customer must pay any amount under clause 35.7 (c)(i) within 30 days after receiving an invoice under clause 35.7 (c)(ii).

35.8 Ending of Suspension - Customer Contract

The Customer may end the suspension at any time by notice to the Contractor.

At the end of the suspension, the rights and obligations of the Customer and the Contractor under the Customer Contract recommence.

35.9 Suspension at Any Time – Head Agreement

The Contract Authority may at any time by notice to the Contractor temporarily suspend the Head Agreement (except for clauses 2, 5, 19, 23, 24, 25, 26, 27, 28, 29, 30, 35, 36 and 37) for a period not exceeding 3 months.

The Contract Authority does not need to give a reason for temporary suspension of the Head Agreement.

35.10 Ending of Suspension – Head Agreement

The Contract Authority may end the suspension at any time by notice to the Contractor.

At the end of the suspension, the rights and obligations of the Contract Authority and the Contractor under the Head Agreement recommence.

36. GENERAL

36.1 Assignment, Novation etc – Head Agreement

Unless the Contractor obtains the Contract Authority’s prior written consent, the Contractor must not:

(a) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Head Agreement; or

(b) subcontract any of its rights or obligations under the Head Agreement.

If the Contractor is a corporation (other than a public company as defined in the Corporations Act 2001 (Cth)) the Contractor is taken to have assigned the Head Agreement if:

(a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or

(b) there is any change in control of the Contractor within the meaning of the Corporations Act 2001 (Cth).
Any consent given by the Contract Authority under this clause to subcontract the Head Agreement is taken to be subject to the following terms and conditions unless otherwise stated in the consent:

(a) the Contractor must include in any subcontract provisions consistent with clauses 23, 24, and 26 and this clause, as if references in those clauses to the Contractor referred instead to the subcontractor;

(b) the Contractor must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a subcontractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;

(c) the engagement by the Contractor of a subcontractor in no way relieves the Contractor from its obligation to perform the Contractor's obligations under the Head Agreement; and

(d) the Contractor must, if requested by the Contract Authority, supply to the Contract Authority a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Contractor has complied with this clause 36.1.

36.2 Assignment, Novation etc – Customer Contract

Unless the Contractor obtains the Customer's prior written consent, the Contractor must not:

(a) sell, transfer, assign, novate, mortgage, charge or otherwise dispose of or deal with any of its rights or obligations under the Customer Contract; or

(b) subcontract any of its rights or obligations under the Customer Contract.

If the Contractor is a corporation (other than a public company as defined in the Corporations Act 2001 (Cth)) the Contractor is taken to have assigned the Customer Contract if:

(a) anything occurs, the effect of which is to transfer, directly or indirectly, the management or control of the Contractor to another person; or

(b) there is any change in control of the Contractor within the meaning of the Corporations Act 2001 (Cth).

Any consent given by the Customer under this clause to subcontract the Customer Contract is taken to be subject to the following terms and conditions unless otherwise stated in the consent:

(a) the Contractor must include in any subcontract provisions consistent with clauses 23, 24, and 26 and this clause, as if references in those clauses to the Contractor referred instead to the subcontractor;

(b) the Contractor must ensure that it is a term of any agreement to subcontract that the remuneration and terms of employment of any employee employed by a subcontractor for the performance of the agreement to subcontract will, for the duration of the agreement to subcontract, be consistent with the remuneration and terms of employment that reflect the industry standard as expressed in awards and agreements and any code of practice that may apply to a particular industry;
(c) the engagement by the Contractor of a subcontractor in no way relieves the Contractor from its obligation to perform the Contractor’s obligations under the Customer Contract; and

(d) the Contractor must, if requested by the Customer, supply to the Customer a copy of any subcontract, which copy may exclude commercially sensitive information but must indicate that the Contractor has complied with this clause 36.2.

36.3 Waiver

(a) Any waiver by the Contract Authority, the Customer or the Contractor must be in writing and signed by the party waiving the right.

(b) Any waiver by the Contract Authority, the Customer or the Contractor does not affect its rights in respect of any other breach of the Customer Contract or the Head Agreement as the case may be by another party.

(c) Subject to clause 36.3 (a), any failure by the Contract Authority, the Customer or the Contractor to enforce any right under the Customer Contract or the Head Agreement as the case may be will not be construed as a waiver of their respective rights under the Customer Contract or the Head Agreement.

36.4 Entire Agreement

The Customer Contract and the Head Agreement as the case may be supersede all prior negotiations, understandings and agreements between the Contract Authority, the Customer and the Contractor relating to the matters covered by the Customer Contract and the Head Agreement and constitute the full and complete agreement between the Contract Authority, the Customer and the Contractor relating to the matters covered by the Customer Contract and the Head Agreement.

36.5 Rights Are Cumulative

Unless otherwise stated the rights, powers and remedies in the Customer Contract and the Head Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

36.6 Counterparts

Unless stated to the contrary in the Customer Contract or the Head Agreement, the Customer Contract and the Head Agreement may be executed in counterparts.

36.7 Applicable Law

The Customer Contract and the Head Agreement are governed by the laws of the State of Western Australia. The Contract Authority, the Customer and the Contractor irrevocably submit to the exclusive jurisdiction of the courts of Western Australia.
36.8 Auditor General

The powers and duties of the Auditor General are not limited or otherwise affected by the terms and conditions of the Customer Contract and the Head Agreement.

The Contractor must allow the Auditor General, or an authorised representative of the Auditor General, to have access to and examine the Contractor’s Records concerning the Customer Contract and the Head Agreement.

36.9 Consent

(a) Whenever the consent of the Contract Authority is required under the Head Agreement:

(i) that consent may be given or withheld by the Contract Authority in the Contract Authority’s absolute discretion and may be given subject to such conditions as the Contract Authority may determine;

(ii) the Contract Authority is not required to provide a reason or reasons for giving or refusing its consent; and

(iii) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 36.9 (a)(i) will constitute a breach of a condition by the Contractor under the Head Agreement.

(b) Whenever the consent of the Customer is required under a Customer Contract:

(i) that consent may be given or withheld by the Customer in the Customer’s absolute discretion and may be given subject to such conditions as the Customer may determine;

(ii) the Customer is not required to provide a reason or reasons for giving or refusing its consent; and

(iii) the Contractor agrees that any failure by it to comply with or perform a condition imposed under clause 36.9 (b)(i) will constitute a breach of a condition by the Contractor under the Customer Contract.

36.10 Further Assurance

The Contract Authority, the Customer and the Contractor must do everything reasonably necessary, including signing further documents, to give full effect to the Customer Contract or the Head Agreement as the case requires.

36.11 Right of Set Off

The Customer may set off or deduct any amount claimed by the Customer from any amount owing by the Customer to the Contractor on any account under the Customer Contract or any other contract between the Contractor and the Customer.

36.12 Costs

Unless otherwise stated, the Contractor must comply with all obligations of the Contractor at the Contractor’s cost.
The Contract Authority, the Customer and the Contractor must pay their own legal and other costs in connection with the preparation and signing of the Customer Contract and the Head Agreement.

The Contractor must pay all stamp duty on the Customer Contract and the Head Agreement.

36.13 Trusts

If the Contractor has entered into Customer Contract or the Head Agreement in the capacity of trustee whether or not the Contract Authority or the Customer has any notice of the trust, the Contractor:

(a) is taken to enter into the Customer Contract and the Head Agreement both as trustee and in the Contractor's personal capacity and acknowledges that the Contractor is personally liable for the performance of the Contractor's obligations under the Customer Contract and the Head Agreement;

(b) will take any action necessary to ensure the assets of the trust are available to satisfy any claim by the Contract Authority or the Customer for any default by the Contractor;

(c) warrants that:

(i) the Contractor has a right to be fully indemnified out of the assets of the trust in respect of obligations incurred under the Customer Contract and the Head Agreement;

(ii) the assets of the trust are sufficient to satisfy the right of indemnity referred to in clause 36.13(c)(i) and all other obligations in respect of which the Contractor has a right to be indemnified out of those assets; and

(iii) the Contractor has the power and authority under the terms of the trust to enter into the Customer Contract or the Head Agreement.

37. PPSA

37.1 Generally

In this clause:

(a) “Contract Authority or Customer’s Personal Property” means all personal property the subject of a security interest granted to or held by the Contract Authority or Customer under the Head Agreement or Customer Contract; and

(b) words and phrases used which have a defined meaning in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

37.2 Further Assurance

If the Contract Authority or Customer determines that the Head Agreement or Customer Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including without limitation obtaining consents, signing and producing
documents, getting documents completed and signed and supplying information) which the Contract Authority or Customer asks and considers necessary for the purposes of:

(a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or

(b) enabling the Contract Authority or Customer to apply for any registration, complete any financing statement or give any notification in connection with the security interest so that the Contract Authority or Customer has the priority required by it; and/or

(c) enabling the Contract Authority or Customer to exercise rights in connection with the security interest.

### 37.3 No Requirement for PPSA Notices

The Contract Authority or Customer need not give any notice under the PPSA (including notice of a verification statement) unless the giving of such notice is required by the PPSA and cannot be excluded.

### 37.4 Priority of the Contract Authority or Customer’s Interest

Nothing in the Head Agreement or Customer Contract shall be taken or construed as an agreement or consent by the Contract Authority or Customer to:

(a) subordinate the Contract Authority or Customer’s interest in the Contract Authority or Customer’s Personal Property (or any part thereof) to any other encumbrance or interest affecting the Contract Authority or Customer’s Personal Property at any time; or

(b) delay the time when a security interest created or provided for under the Head Agreement or Customer Contract attaches to the relevant collateral.

### 37.5 Enforcement

To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Contract Authority or Customer of any security interest in the Contract Authority or Customer’s Personal Property, the Contractor and the Contract Authority or Customer agree that the following provisions of the PPSA do not apply, to the extent the PPSA allows them to be excluded:

(a) **enforcement methods** sections 118 (Enforcing security interests in accordance with land law decisions), 125 (Obligation to dispose of or retain collateral), 129(2) and (3) (Disposal by purchase), 134(2) (Proposal of secured party to retain collateral), 136(3) and 136(4) (Retaining collateral free of interests), 137 (Persons entitled to notice may object to proposal) and 138B(4) (Seizure and disposal or retention of crops);

(b) **notices** sections 95 (Secured party must give notice of removal of accession), 121(4) (Enforcement of security interests in liquid assets – notice to higher priority parties and grantor), 127 (Seizure by higher priority parties – notice), 130 (Notice and disposal of collateral), 132 (Secured party to give statement of account), and 135 (Notice of retention of collateral) and 136(5) (Retaining collateral free of interests); and
(c) (rights to remedy) sections 142 (Entitled persons may redeem collateral) and 143 (Entitled persons may reinstate security agreement).

37.6 Negative undertakings

The Contractor must not:

(a) create any security interest or lien over any of the Contract Authority or Customer’s Personal Property whatsoever (other than security interests granted in favour of the Contract Authority or Customer under this Head Agreement or Customer Contract);

(b) sell, lease or dispose of its interest in or control (as such term is defined in the PPSA) or use of any of the Contract Authority or Customer’s Personal Property;

(c) give possession of the Contract Authority or Customer’s Personal Property to another person other than the Contract Authority or Customer or where the Contract Authority or Customer expressly authorises it to do so;

(d) permit any of the Contract Authority or Customer’s Personal Property to become an accession to or commingled with any asset;

(e) change its name without first notifying the Contract Authority or Customer of the new name not less than 21 days before the change takes effect;

(f) relocate its principal place of business outside Australia or change its place of registration or incorporation;

(g) move any of the Contract Authority or Customer’s Personal Property outside Australia; or

(h) allow any other person to acquire control of any personal property forming part of the Contract Authority or Customer’s Personal Property at any time.

37.7 Contract Authority or Customer’s Interest Remains Unaffected

The Contract Authority or Customer’s interest in the Contract Authority or Customer’s Personal Property is not affected by anything which, but for this provision, might have that effect including any failure to perfect or to continuously perfect the security interest in relation to any personal property forming part of the Contract Authority or Customer’s Personal Property at any time.

37.8 Notices to the Contract Authority or Customer

The Contractor must notify the Contract Authority or Customer as soon as the Contractor becomes aware of any of the following:

(a) if any personal property which does not form part of the Contract Authority or Customer’s Personal Property becomes an accession to the Contract Authority or Customer’s Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession;

(b) if any of the Contract Authority or Customer’s Personal Property is located or situated outside Australia; and
(c) upon request by the Contract Authority or Customer, of the present location or situation of any of the Contract Authority or Customer’s Personal Property.

37.9 Costs and Expenses Relating to the PPSA and Registration

(a) Everything the Contractor is required to do under this clause 37 is at the Contractor’s expense.

(b) The Contractor agrees to pay or reimburse, upon demand, all costs and expenses of the Contract Authority or Customer in connection with anything the Contract Authority or Customer is required to do under this clause 37, including preparing, registering and maintaining any financing statement or financing change statement.

END
IMPORTANT

By submitting an Offer, a Respondent will be deemed to have reviewed and understood this Addendum.

Addendum Advice

Please find additional information relating to the Request - CUA MBBP2018.

Respondents are advised that the MS PowerPoint presentation used at the Tender Briefing held on the 18 January 2018 has been uploaded in Tenders WA as a PDF document titled: *CUAMBBP2018 Non Mandatory Briefing Presentation*

Below are the answers to questions raised after the Tender Briefing.

1. **Question**
   On page 14, you outline that the scope of the CUA includes 3 categories. However on page 36 only two categories are listed, A and B. Can you please clarify if category C should also be listed on page 36 or do those questions only pertain to categories A and B?

   **Answer**
   Category C has been added to the table on page 36. Respondents are reminded that in order to offer services in Category C, an Offer for Category A and/or B must be submitted.

   **Corrections to CUAMBBP2018 Request (MS Word document)**

   Respondents are advised of the following changes:
   - Part A Section 4.1 Media Booking and Buying g) Online Recruitment Advertising has been amended.
   - Part B Section 5 Reference to Category C has been added in the table to indicate the categories offered.
   - Part B Section 5 c) Category Specific Experience. The pages limit has been changed from three to five pages.

   End of Addendum 1.
ADDENDUM TO REQUEST DOCUMENTS
REQUEST NO.: MBBP2018
ADDENDUM NO.: 2
DATE OF ISSUE: 2 February 2018
NO. OF PAGES: 4 (Inc. this sheet)

IMPORTANT

By submitting an Offer, a Respondent will be deemed to have reviewed and understood this Addendum.

Addendum Advice

Please find additional information relating to the Request - CUA MBBP2018. Below are the answers to questions raised after Addendum 1 was released.

1. Section in the Request
   Part A Schedule 2 - Specification / Statement of Requirements
   3. Expenditure

Question: In Schedule 2 - Specification/Statement of Requirements, Section 3 Expenditure, on page 16 & 17 of the document, you make reference to the Recruitment advertising Net Media spend for 2015/2016 & 2016/2017. The information provided gives the dollar value and number of placements/transactions. We wish to request the same information for Tender Notice and Public Notice advertising through the contract, importantly the number of transactions for Non-Digital media and Non-Digital media placed via the online booking system.

Answer:
Please refer to the table below for approximate spend:

<table>
<thead>
<tr>
<th></th>
<th>2015-2016</th>
<th>2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Digital</td>
<td>Non-Digital</td>
</tr>
<tr>
<td>Via the online booking system</td>
<td>$372</td>
<td>$936k</td>
</tr>
<tr>
<td>Number of Placements (i.e. number of transactions)</td>
<td>3</td>
<td>1,558</td>
</tr>
<tr>
<td>Manual bookings</td>
<td>$7k</td>
<td>$1.5 million</td>
</tr>
<tr>
<td>Number of Placements (i.e. number of transactions)</td>
<td>4</td>
<td>2,488</td>
</tr>
</tbody>
</table>
2. **Section in the Request**

Part B 5. Qualitative Requirements.
5 a). Service delivery approach. (iii) Systems used to provide the services.

*For Category A Respondents:*

(E) Overview of the interface capability with the PSC online recruitment system specified in Schedule 2, Section 4.1 g) Online Recruitment Advertising

**Question:** Please could we get a better understanding of the recruitment advertising workflow from the ‘Advertising Booking System’ through to ‘PSC Online Recruitment system’, and other ‘external job boards’. Is there a diagram that can explain this data flow?

**Answer:**
Please refer to Attachment 1 at the end of this addendum.

**Question:** Is there any technical information that PSC Online Recruitment System (Big Red Sky) can provide around integration/ interface requirements/ capabilities?

**Answer:**
The Public Sector Commission cannot guarantee that BigRedSky (Thomson Reuters) will be the eRecruitment provider at the time of the transition. Accordingly, technical information and specifications are not seen as required until the new online eRecruitment system is in place. A formal project to establish the process for the interface will be scheduled with the Preferred Respondent.

3. **Section in the Request**

Part B 5. Qualitative Requirements.
5 a). Service delivery approach. (ii) Capacity to provide services to WA customers in the Metropolitan and Regional areas: (Up to three pages)

**Question:** In section 5A Service Delivery Approach (ii) it says we can have three pages for our answers. Does this mean three pages for answers to A, B, & C and then another three pages for D & E? This would seem fair as it would penalise people answering for Category A & B as opposed to just one Category. In effect we would have six pages to then answer A, B, C, D & E.

**Answer:**
Please note that Respondents will be allowed to provide a response in one page for each sub-criterion (A, B, C, D & E). This means one page for question ii) (A), one page for ii) (B), etc. The total number of pages is now up to five pages instead of the initial requirement of up to three pages.
4. Section in the Request
Part B 5. Qualitative Requirements.
5 a). Service delivery approach. (iii) Systems used to provide the services: (Up to three pages)

**Question:** Is it okay to use six pages to cover both of the Categories respective questions?

**Answer:**
Please note that Respondents will be allowed to provide a response in one page for each sub-criterion (A, B, C, D & E). This means one page for question iii) (A), one page for iii) (B), etc. The total number of pages is now up to five pages instead of the initial requirement of up to three pages.

5. Section in the Request
Part B 5. Qualitative Requirements.
5 c). Category specific experience.

**Question:** In section 5C Category Specific Experience it states we can use three pages per Category in our response. Can you clarify how many pages are available if we are responding to Categories A & B?

**Answer:**
Please refer to Addendum 1. The pages limit was changed from three to five pages and as such the Request document was updated. The Respondent would need to provide a response in five pages for Category A and/or five pages for Category B where applicable.
ATTACHMENT 1

The diagram below represents the process that is planned for when the new eRecruitment system is in place. The diagram is a high level initial version of the process, detailed discussion will be held with the preferred Respondent and a final workflow will be developed.

End of Addendum 2.
REQUEST TITLE:
Media Booking, Buying and Planning Services for Advertising

REQUEST NUMBER:
MBBP2018

CLOSING TIME:
2:30 PM Wednesday 7 February 2018, Western Australia

ISSUED BY THE CONTRACT AUTHORITY ON BEHALF OF:
The Public Authorities and other persons and bodies described as Potential Customers in Clause 2.1 of the General Conditions
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PART A – REQUEST NO MBBP2018

1. INTRODUCTION

1.1 BACKGROUND

The Department of Finance issues this Request to establish a Whole of Government Common Use Arrangement (CUA) for the provision of Media Booking, Buying and Planning Services for Advertising (CUA MBBP2018). This CUA will replace the current CUA for Master Media Services (CUA MMS2013) that was established in 2013 and is due to expire on 30 June 2018.

This CUA will provide an efficient procurement mechanism for Public Authorities and other CUA approved users (such as Public Benevolent Institutions) to access the services of suitably qualified and experienced providers to deliver media booking and buying services and related advertising services that meet current and future advertising needs that best represent the WA Government.

The resultant Contract will be for an initial period of three (3) years with two (2) extension options of one (1) year each. The extension options are available at the absolute discretion of the Department of Finance.

It is expected that CUA MBB2018 will commence in July 2018.

CUA MBBP2018 will be mandatory for all Public Authorities state-wide in accordance with the buying rules for buying media within Australia, with some media related services that will be non-mandatory. A full statement of the services required under the Head Agreement is provided in Schedule 2 – Specification/Statement of Requirements.

1.2 SUBMISSION OF OFFER

1.2.1 HAND AND POST LODGEMENT

The Respondent may submit the Offer:

<table>
<thead>
<tr>
<th>By hand at:</th>
<th>By post at:</th>
</tr>
</thead>
</table>
| 16 Parkland Road
OSBORNE PARK WA 6017 | Tendering Services, Locked Bag 11,
OSBORNE PARK BC WA 6916 |

If the Respondent submits the Offer by hand or post, the Respondent must submit the Offer to the relevant addresses above and provide One (1) hard copy marked “Original” and provide one (1) electronic copy on CD/DVD or USB flash drive.

The electronic copy of the Offer must be provided on a CDROM /USB flash drive in minimum Microsoft Word 97 or later.doc format. Any promotional materials can be provided in Adobe Portable Document file ‘.pdf” format. In the event of any discrepancy between the electronic copy and the original hard copy of the Offer, the original hard copy shall prevail. The CD/DVD or USB flash drive must be labelled with the Respondent’s name and Request Number.

1.2.2 FACSIMILE LODGEMENT

Offers may not be submitted by facsimile.
1.2.3 **ELECTRONIC LODGEMENT**


Tenders WA can facilitate the uploading of files to a maximum 100MB limit per upload request.

The Respondent must be registered to submit an offer electronically.

1.2.4 Conditions regarding the submission of Offers (including late lodgement and mishandling) are contained in the Request Conditions.

1.3 **OFFER VALIDITY PERIOD**

The Offer Validity Period is for a period of six (6) months.

1.4 **TENDERS WA**

The Respondent may register (free) for the Tenders WA website to ensure that the complete Tender has been downloaded including any and all addenda.

1.5 **BRIEFING**

A non-mandatory briefing to Respondents will be conducted at:

**Date:** Thursday, 18 January 2018  
**Time:** 9:30 AM Perth, Western Australia  
**Location:** Ground Floor, Optima Centre 16 Parkland Road  
Osborne Park, Western Australia

The Respondent is requested to confirm its attendance by no later than 3:00 PM, Perth Western Australia time on Tuesday 16 January 2018 by contacting Glorelid Beaumont on (08) 6551 1439 or Glorelid.Beaumont@finance.wa.gov.au.

1.6 **CONTACT PERSONS**

Enquiries are best dealt with by the most appropriate contact, shown below.

The Respondent must not contact any other person within Government or any consultant engaged in relation to this Request to discuss this Request.

**ALL ENQUIRIES:**  
**Name:** Glorelid Beaumont  
**Title:** Procurement Manager  
**Telephone:** 6551 1439  
**E-mail:** Glorelid.Beaumont@finance.wa.gov.au  
**From 22 January 2018 please contact:**  
**Name:** Kris Van Der Spoel  
**Title:** Procurement Manager  
**Telephone:** 6551 1330  
**E-mail:** Kristien.vanderSpoel@finance.wa.gov.au
ADVICE ON DELIVERING OFFERS:
Name: Tendering Services
Telephone: (08) 6551 2345

ADVICE ON USING TENDERS WA:
Name: Procurement Systems Support
Telephone: (08) 6551 2020

1.7 REQUEST CONDITIONS
The “Request Conditions” are contained in the Part A of the Request Conditions and General Conditions of Contract [August 2017] located at www.finance.wa.gov.au (select Government Procurement, then select “Goods and Services Templates, Guides and Conditions of Contract” from the Quick Links menu) and contain important provisions regarding the nature of this Request and the consequences of the Respondent submitting an Offer. The Respondent is deemed to have read and considered the Request Conditions prior to submitting an Offer.
2. SELECTION PROCESS

2.1 SELECTION PROCESS

Value for Money is a key State Supply Commission policy objective to ensure that, when purchasing products and/or services, Public Authorities achieve the best possible outcome for every dollar spent by assessing the costs and benefits of, and the risks inherent in, an Offer rather than simply selecting the lowest Offered Price.

In determining Value for Money, the Contract Authority in the case of a Common Use Arrangement or otherwise the Customer will:

a). apply relevant State Supply Commission and Government policies to the assessment of Offers;

b). assess Offers against the Compliance and Disclosure Requirements in Section 4 in Part B;

c). assess Offers against the Qualitative Requirements in Section 5 in Part B;

d). assess Offers against the Insurance Requirements in Section 6 in Part B; and

e). assess the Offered Prices which includes assessing the Offered Price and Pricing Requirements in Schedule 3.

The Contract Authority reserves the right to:

a). shortlist Respondents;

b). seek presentations from Respondents to extend qualitative understanding and build understanding of effectiveness of the services offered;

c). undertake site visits for shortlisted Respondents;

d). trial of any online system offered by the short-listed Respondents; and

e). revise scoring based on site visits, system review and additional information (e.g. due diligence).

Should presentations or trials of the online system be requested, the Evaluation Panel may take the opportunity to request responses to specific scenarios or to clarify aspects of the Offer/s.

The determination of Value for Money will require consideration of all of the above factors and any other matters that the Contract Authority or Customer considers relevant.

2.2 STATE SUPPLY COMMISSION AND GOVERNMENT POLICIES

The following State Supply Commission policies apply to this Request:

a). Value for Money;

b). Probity and Accountability;

c). Open and Effective Competition; and

d). Sustainable Procurement.

The following Government policies apply to this Request:

a). Buy Local Policy; including the Addenda.
These policies can be viewed and downloaded at www.ssc.wa.gov.au or copies of these policies are available from the State Supply Commission (telephone (08) 6551 1500).

This Request is a covered procurement under the Australia-United States Free Trade Agreement (AUSFTA), the Australia-Chile Free Trade Agreement (ACFTA), the Korea-Australia Free Trade Agreement (KAFTA), the Japan-Australia Economic Partnership Agreement (JAEPA) and the Singapore-Australia Free Trade Agreement (SAFTA).
# SCHEDULE 1 - HEAD AGREEMENT DETAILS AND CUSTOMER CONTRACT DETAILS

## HEAD AGREEMENT DETAILS

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Contract Authority</strong></td>
<td>The Contract Authority is the Director General, Department of Finance, as delegate of the State Supply Commission.</td>
</tr>
<tr>
<td><strong>2. The Term of the Head Agreement</strong></td>
<td>The Term of the Head Agreement is three (3) years.</td>
</tr>
<tr>
<td><strong>3. Commencement Date</strong></td>
<td>The Contract Authority will notify the Contractor of the Commencement Date in the Letter.</td>
</tr>
<tr>
<td><strong>4. Extensions</strong></td>
<td>The Contract Authority has two (2) options to extend the Term, each option having a one (1) year duration. The Contract Authority has the discretion to exercise both extension options simultaneously, if it wishes to do so.</td>
</tr>
<tr>
<td><strong>5. Notice of Extension</strong></td>
<td>Clause 3.8 of the General Conditions applies.</td>
</tr>
<tr>
<td><strong>6. Price Variation</strong></td>
<td>Service Fees based on a percentage of the net media placement values are fixed for the Contract Term. Maximum hourly rates are fixed for the first year of the Term and may be varied on each anniversary of the Commencement Date by the Wage Price Index (Wage Price Index, Australia: (Cat No. 6345.0): Table 3b. Total Hourly Rates of Pay Excluding Bonuses: Private Sector by State – Western Australia). The Contractor shall apply in writing for the Contract Authority’s approval each time a revised price is requested to be applied to the Head Agreement. Application to the Contract Authority must be made within twenty one (21) days prior to the Contract Commencement Date or anniversary thereof. The revised price will take effect on the anniversary of the Contract Commencement Date. Where a Contractor has failed to make an application within the specified timeframe, the Contractor will be precluded from applying for a price variation until the following anniversary date. No price variation is payable unless and until approved by the Contract Authority. Any request by the Contractor for back-payment of price variations will not be considered. Acceptance of the price variation request will be at the sole discretion of the Contract Authority. Contractors may apply to decrease the maximum hourly rates and/or Service Fees at any time.</td>
</tr>
<tr>
<td><strong>7. Public Liability</strong></td>
<td>Public liability insurance covering the legal liability of the Contractor and the Contractor’s Personnel arising out of the Services for an amount of not less than $20 million for any one occurrence and unlimited in the number of occurrences happening in the period of insurance.</td>
</tr>
</tbody>
</table>
| **8. Professional Indemnity** | Professional indemnity insurance covering the legal liability of the Contractor and the Contractor’s Personnel under the Customer Contract, arising out of any act, negligence, error or omission made or done by or on behalf of the Contractor, or any subcontractor in connection with the Contract for a sum of $5 million for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance. Professional indemnity insurance required under this clause must include:  
  a) fraud and dishonesty;  
  b) defamation;  
  c) infringement of intellectual property rights;  
  d) loss of or damage to documents and data; and  
  e) breach of Australian Consumer Law. |
9. **Workers' Compensation**

Workers' compensation insurance in accordance with the provisions of the *Workers' Compensation and Injury Management Act 1981* (WA), including cover for common law liability for an amount of not less than **$50 million** for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the *Workers' Compensation and Injury Management Act 1981*.

10. **Contract Management Requirements**

**Compliance Requirements**

**Reporting**

The Contractor shall accurately record and maintain all transactions made through this CUA and report these transactions in the Sales Report to the Contract Authority on a quarterly basis as set out in *Appendix A ‘Reporting Requirements’*. The quarterly report will be required to be uploaded onto the supplier portal within 20 days of the quarter ending.

The Contractor shall provide a report on an annual basis, to collect information about their estimate of the benefits of participation in terms of generation or retention of employment positions.

Reporting requirements shall survive termination of this Head Agreement until all Customer Contracts pursuant to this Head Agreement have expired.

**Insurance currency**

The Contractor must maintain currency of their insurances under the Head Agreement. The Contractor must submit new certificates of currency to the Contract Authority, within 30 days of expiry of the previous certificate. Failure to provide certificates of currency of insurances within 30 days of their expiry constitutes a breach of obligation under the Head Agreement.

**Pricing**

Maintain correct pricing for 100% of transactions whereby all service prices are at or below the Maximum Rates for the relevant service types.

**Meetings**

The Contractor’s Account Manager will be required to attend the following meetings during the Term of the Contract:

a). Meeting or teleconference with the Contract Authority’s Contract Manager on a quarterly basis during the Term of the Contract to analyse and discuss contract performance, resolve contract and service issues and contract improvement strategies.

b). Other meetings may be convened upon request by the Contract Authority to the Contractor on an as needed basis.

**Key Performance Indicators (KPIs)**

a). The Contractor must comply with, and provide a report on KPIs to the Department of Finance as per the requirements detailed in *Appendix B ‘Key Performance Indicators (KPIs)’*.

b). Performance against the KPIs will be considered in determining whether the Contract Authority exercises its Contract Extension option.

c). The process for renegotiating KPIs must start with a formal written request to the Contract Authority’s Contract Manager. The commencement date for any KPI will be by mutual agreement.

d). In the event that the failure to meet the KPIs cannot be remedied, it may then be deemed as an Event of Default.

**Contract Authority’s Representative**

Name: Kristien van der Spoel
Telephone: (08) 6551 1330
Email: Kristien.vanderSpoel@finance.wa.gov.au

**Contract Authority’s address details**

Department of Finance
Government Procurement
Level 4, Optima Centre. 16 Parkland Road, OSBORNE PARK WA 6017
| **11. Confidential Information** | The Contract Authority specifies the following information to be “Confidential Information” under paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions:  
- All information relating to government advertising. |
| **12. Panel Arrangement** | If as a result of this Request a Panel Arrangement is formed, Clause 4(b) of the General Conditions applies. |
| **13. Police Clearance** | Clause 18.4 of the General Conditions applies. |
| **14. Confidential Declaration – Prevention of Paedophilia** | Clause 18.5 of the General Conditions does not apply. |
| **15. Warranties** | For the purposes of clause 19.5 of the General Conditions, no warranties are specified. |
| **17. Publicity** | For the purposes of clause 24.4 of the General Conditions, no other Public Authority is specified. |
| **18. Termination Without Cause** | a). Unless stated to the contrary in the Head Agreement Details, the Contract Authority may, in its absolute discretion and for its sole benefit, terminate this Head Agreement without cause in whole or in part at any time by 30 days (or such other period as may be agreed between the parties) prior written notice to the Contractor. The Contractor will immediately comply with any directions given by the Contract Authority in the notice. No compensation will be payable by the Contract Authority to the Contractor in the event of termination pursuant to this clause 18.  
b). Termination of the Head Agreement under sub-clause (a) does not have any effect on any Customer Contracts entered into prior to the date of termination of the Head Agreement, but for the avoidance of doubt the Contractor may not enter into any new Customer Contracts after the date of termination of the Head Agreement. |
| **19. Cost Reductions** | Where new technologies or service methodologies are implemented that reduce the Contractor’s costs, then the Contract Authority may request a review of and/or change to Schedule 3 – Pricing that will reduce costs to the Contract Authority and Customer; and the Contractor shall not refuse any reasonable request. |
# CUSTOMER CONTRACT DETAILS

<table>
<thead>
<tr>
<th>1. Customer</th>
<th>The Customer will be specified in the Order.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. The Term of the Customer Contract</td>
<td>The Term will commence on the Commencement Date and will expire when the Services have been supplied in accordance with Clause 6 of the General Conditions.</td>
</tr>
<tr>
<td>3. Commencement Date</td>
<td>The Contract will commence when the Customer places an Order or makes a request for services.</td>
</tr>
<tr>
<td>4. Price Variation</td>
<td>The price variation mechanism will be that specified in the Head Agreement, but may be lowered by agreement with the Customer.</td>
</tr>
<tr>
<td>5. Public Liability</td>
<td>Public liability insurance covering the legal liability of the Contractor and the Contractor’s Personnel arising out of the Services for an amount of not less than $20 million for any one occurrence and unlimited in the number of occurrences happening in the period of insurance.</td>
</tr>
<tr>
<td>6. Professional Indemnity</td>
<td>Professional indemnity insurance covering the legal liability of the Contractor and the Contractor’s Personnel under the Customer Contract, arising out of any act, negligence, error or omission made or done by or on behalf of the Contractor, or any subcontractor in connection with the Contract for a sum of $5 million for any one claim and in the annual aggregate, with a provision of one automatic reinstatement of the full sum insured in any one period of insurance. Professional indemnity insurance required under this clause must include:</td>
</tr>
<tr>
<td>a) fraud and dishonesty;</td>
<td></td>
</tr>
<tr>
<td>b) defamation;</td>
<td></td>
</tr>
<tr>
<td>c) infringement of intellectual property rights;</td>
<td></td>
</tr>
<tr>
<td>d) loss of or damage to documents and data; and</td>
<td></td>
</tr>
<tr>
<td>e) breach of Australian Consumer Law.</td>
<td></td>
</tr>
<tr>
<td>7. Workers’ Compensation</td>
<td>Workers’ compensation insurance in accordance with the provisions of the Workers’ Compensation and Injury Management Act 1981 (WA), including cover for common law liability for an amount of not less than $50 million for any one occurrence in respect of workers of the Contractor. The insurance policy must be extended to cover any claims and liability that may arise with an indemnity under section 175(2) of the Workers’ Compensation and Injury Management Act 1981.</td>
</tr>
<tr>
<td>8. Contract Management Requirements</td>
<td>Reporting: The Customer may request reports as per Schedule 2, Section 5.4 of this Request.</td>
</tr>
<tr>
<td></td>
<td>Meetings: The frequency of meetings is to be agreed between the Customer and the Contractor.</td>
</tr>
<tr>
<td></td>
<td>Key Performance Indicators: To be agreed between the Customer and the Contractor.</td>
</tr>
<tr>
<td>SPECIAL CONDITIONS</td>
<td></td>
</tr>
<tr>
<td>9. Confidential Information</td>
<td>The Customer specifies the following information to be “Confidential Information” under paragraph (b) of the definition of “Confidential Information” in clause 2.1 of the General Conditions:</td>
</tr>
<tr>
<td></td>
<td>• All information relating to government advertising.</td>
</tr>
<tr>
<td>11. Confidential Declaration – Prevention of Paedophilia</td>
<td>Clause 18.5 of the General Conditions does not apply.</td>
</tr>
<tr>
<td>12. Warranties</td>
<td>For the purposes of clause 19.5 of the General Conditions, no warranties are specified.</td>
</tr>
</tbody>
</table>
### Part A

#### Head Agreement Details and Customer Contract Details

**Respondent to Read and Keep This Part A**

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>13. Intellectual Property Owner</strong></td>
<td>Clause 23.1 of the General Conditions applies.</td>
</tr>
<tr>
<td><strong>14. Working Papers</strong></td>
<td>Clause 23.1 (e) of the General Conditions applies.</td>
</tr>
<tr>
<td><strong>15. Publicity</strong></td>
<td>For the purposes of clause 24.4 of the General Conditions, no other Public Authority is specified.</td>
</tr>
<tr>
<td><strong>16. Government Policies</strong></td>
<td>For the purposes of clause 32 of the General Conditions, no obligations relating to Government procurement policies are specified.</td>
</tr>
</tbody>
</table>
SCHEDULE 2 - SPECIFICATION / STATEMENT OF REQUIREMENTS

1. STATEMENT OF REQUIREMENTS

This Request document outlines the requirements for a new Common Use Arrangement (CUA) for Media Booking, Buying and Planning Services for Advertising to replace the current CUA MMS2013 Master Media Services due to expire on 30 June 2018.

The CUA will be mandatory in accordance with the buying rules for all Public Authorities state-wide for buying media within Australia.

The objectives of the CUA are to:

- establish contemporary, streamlined and high quality service delivery and account management arrangements;
- develop high quality strategy to warrant the efficiency and effectiveness of advertising; and
- deliver significant commercial benefits through the negotiation of competitive media rates, discounts and other related value-added benefits to government.

The following Customers are able to access this CUA:

- Western Australian Public Authorities (a department of the Public Service of the State or an agency, authority or instrumentality of the Crown in right of the State) under the State Supply Commission's jurisdiction;
- approved Government entities not under the State Supply Commission's jurisdiction;
- approved Public Benevolent Institutions (PBIs); and
- other approved bodies approved by the Department of Finance such as Local Government Authorities and Universities.

A comprehensive list of users that have approval from the Department of Finance to buy from this CUA is at [https://www.contractswa.finance.wa.gov.au](https://www.contractswa.finance.wa.gov.au) (Approved CUA User List).

The scope of the CUA will include three categories:

1. Media booking and buying;
2. Media strategy and channel planning services; and
3. Additional advertising services.

The Department of the Premier and Cabinet (DPC) Government Communications Unit (GCU) plays an active role in the operation of the CUA, specifically providing media and advertising policy advice to the Contract Authority and CUA Customers.

2. DEFINITIONS

Ad serving: The delivery (uploading) and tracking of an advertisement through a server. This technology is normally operated by a third party and is independent of the website where the ad is being displayed.

Advertiser: Refers to the CUA Customer.
Blacklist: Websites on which advertising is prohibited and for which the Contract Authority or Customer will not pay any Third Party Costs.

Campaign: Advertising that is promotional in nature and generally runs over a sustained period to encourage behaviour change, educate or promote ongoing activities of Government.

CUA Fee: Percentage of the Net Media Cost paid to the CUA Contractors.

Conflict of Interest: Any actual, potential or perceived conflict of interest including any situation, arrangement, understanding, association, or agreement which might jeopardise the ability of the Contractor or Personnel to represent the Customer’s best interests.

Digital Media: Buying media using digital technologies, mainly on the Internet, but also including display advertising and any other digital medium.

Direct Digital Buying: Purchasing Ad Placement on websites or any other digital medium direct from the media outlet/provider, to deliver messages to consumers.

Media Schedule: Program or plan developed from the Media Plan that typically contains specific details including the media channels used in an advertising campaign, insertion or broadcast dates, positions, net media costs and all applicable CUA Fees.

Net Media Cost: Total of advertising expenditure typically represented by 90% of the Gross Media Cost excluding GST.

Optimisation: Improvements to attain the most cost effective and highest achievable performance with regard to any given constraints. This may include adjustments of a Media Schedule in real time to ensure it maximises its effectiveness.

Paid Search: Paid Search or Search Engine Marketing (SEM) is the process of advertising within a search engine or a partner site to gain website traffic by paying either each time an ad is clicked (pay-per-click - PPC) or when an ad is displayed (cost-per-impression - CPM).

Programmatic Digital Buying: Use of technology to automate and optimise the ad buying process in real time.

Public Notice: One-off or short term clear, simple message or announcement. Types include: public transport notices, road closures, changes to government services, grants and awards programs, statutory/regulatory notices.

Recruitment: Advertising for a specific or general job vacancy or employment opportunity; can be for one or more positions advertised at the same level, generally identical in nature.

Search Engine: A program that searches documents and databases for specified keywords and returns a list of the documents where the keywords (specified by the user) were found, especially on the World Wide Web.

Search Engine Optimisation (SEO): Process of maximizing the number of visitors to a particular website by ensuring that the site appears high on the list of results returned by a search engine.

Social Media: Collective of online communications channels or networking websites dedicated to community-based input, interaction, content-sharing and collaboration to increase brand exposure and broaden customer search.
Social Media Management: Monitoring, classifying, replying to and, if necessary, removing content from a Customer’s owned and controlled social media platform(s) or site(s). This includes preparing and delivering a report summarising social media activity monitored.

Tender Notice: The promotion of open approaches to market, which may include: requests for tenders; requests for quote; requests for information; requests for proposal; requests for expressions of interest.

Traditional Media: Buying media using non-digital channels such as newspaper, radio, television, out of home, magazines and cinema.

Trafficking/Despatch: Process of setting up advertisements in the ad-server so that when an advertisement request is made to the ad-server, the correct advertisement is returned and played based on the advertisement policies and advertisement targeting information in the advertisement tag.

3. EXPENDITURE

To assist Respondents to prepare their submissions, historical media expenditure on the current Master Media CUA MMS2013 for all approved users is provided below.

Respondents should not rely upon expenditure history as an indication of future contract activity. The information provided does not represent a commitment of any kind with regard to future spend or usage. The Contract Authority also anticipates that there will be fluctuations in the levels of expenditure throughout the life of the CUA.

Total expenditure of the initial three year contract term of the current Master Media CUA MMS2013 was approximately $182 million, with an additional $63 million for the 2016-17 financial year. This expenditure includes all public authorities and other CUA approved users (Refer to Approved CUA User List).

Recruitment advertising is done predominantly using the WA Government online eRecruitment system (www.jobs.wa.gov.au). Recruitment advertising on online external job boards is currently done under the current Master Media CUA (MMS2013).

Net Media spend on Recruitment advertising in all media for the 2016-17 financial year was $1.8 million, 10% less than the previous financial year.
Recruitment Advertising:

<table>
<thead>
<tr>
<th></th>
<th>2015-2016</th>
<th>2016-2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Placements (i.e. number of transactions)</td>
<td>3,316</td>
<td>3,329</td>
</tr>
<tr>
<td>Recruitment advertising on online external job boards</td>
<td>$595k</td>
<td>$676k</td>
</tr>
<tr>
<td>Number of Placements (i.e. number of transactions)</td>
<td>1,329</td>
<td>1,539</td>
</tr>
<tr>
<td>Number of Placements by Public Authorities</td>
<td>54%</td>
<td>69%</td>
</tr>
</tbody>
</table>

The following chart shows the CUA MMS2013 Campaign Media Expenditure that was made across a range of channels, including TV, radio, press, magazines, digital, out of home and cinema for the last two financial year. This expenditure includes all public authorities and other CUA approved users (Refer to Approved CUA User List).

![CUA MMS2013 Share by Medium Type](chart.png)

4. **SPECIFICATION**

4.1 **Media Booking and Buying**

This is the core service of the CUA and it is mandatory for all media buying within Australia and non-mandatory for media buying overseas in accordance with the buying rules.

The Media Booking and Buying Contractor will deliver services to Customers that include but are not limited to the following activities as part of the Media Buying process. These activities will be covered by the CUA Fee that the Contractor receives as part of its services:

a) **Booking and Buying**

The Contractor will purchase media on behalf of Customers and negotiate any additional discounts and value added benefits beyond the annual discounted rates on a booking-by-booking basis.

The Contractor must provide Advertising Services when required by a Customer, for the following types of advertising:

1. Campaign;
2. Recruitment;
3. Public Notice; and
4. Tender Notice.

Definitions of the types of advertising outlined above are set out in Section 2 of this Schedule 2. The Contractor must seek advice from the Department of Finance where there is ambiguity about which definition applies.

Campaign advertising requires WA Public Authorities to obtain approval from the Department of the Premier and Cabinet (DPC) before submitting a campaign booking request to the Contractor. The Contractor must only accept campaign bookings for approved government campaigns as issued by the DPC for Public Authorities; and campaigns for all Customers whose media schedules conform to the definition of Campaign Advertising provided under this CUA.

Recruitment, Public Notice and Tender Notice advertising are primarily placed in print or online (digital) media within Australia. Some overseas placement may be required.

The Contractor must not book any advertising until the Customer has approved the Media Booking. Any bookings made by the Contractor before receiving the Customer’s approval are at the Contractor’s own financial risk.

Media costs through the CUA are invoiced on a net media basis which means that media commissions and rebates have been abolished under this arrangement. Contractors booking media on behalf of Customers will be required to complete a declaration confirming that no commissions or rebates have been exchanged between the Contractor and media outlets during the term of the CUA. The Contract Authority reserves the right to specify the frequency of the signed declaration, but it is anticipated that this will occur annually at each anniversary of the CUA.

b) Negotiation

The Contractor will participate in the annual negotiations of media rates and trading terms for all forms of advertising with relevant third party media suppliers. This involves negotiating best-in-market media rates, discounts and value added benefits for government. A representative from the Department of Finance and/or the Department of the Premier and Cabinet (DPC) may assist or lead the negotiations.

The negotiation process must seek to achieve optimum rate, volume and buying concessions with the aim of delivering the best overall commercial and strategic outcomes to the Western Australian Government, while leveraging opportunities for further discounts on rates when booking media throughout the course of the year.

The Contractor must conduct negotiations with media suppliers in a rigorous and transparent manner; and ensure that any trading agreements established with media suppliers do not conflict with the terms and conditions of this CUA.

The Contractor must compile and issue to the Contract Authority complete and accurate copies of media rate cards, including circulation, readership, distribution, specifications, publication dates, booking and material deadlines, and other information, as appropriate.

The Contractor must provide a detailed summary of the rate negotiation outcomes, including savings to Government, compared to the previous year as agreed with the Contract Authority.
c) Optimisation

The Contractor must use its best efforts to review and optimise relevant advertising in all Media on an ongoing basis while the advertising is in market. This includes tracking (live), monitoring, analysing, advising and implementing changes.

The Contractor must request and receive Customer's approval before implementing the recommendations or changes or as authorised at the commencement of any campaign.

The Contractor must provide the Customer with access to relevant third party verification tools and reports to assist with that review and optimisation while the advertising is in the market.

d) Media Performance Reports

The Contractor must provide Customers with ongoing, interim and post-campaign Media Performance Reports for each campaign to measure the effectiveness of the advertising activity against its objectives and to identify issues that require resolution or improvement for any future campaign. This includes but is not limited to Target Audience Rating Points (TARPs), metrics related to the media schedule.

The timing and the content of the delivery of ongoing and interim Media Performance Reports is to be agreed between the Contractor and the Customer and will include analysis and strategic advice where applicable.

The post-campaign Media Performance Report must include the Contractor's analysis and strategic advice on the performance of all media booked. Where requested by the Customer, the Contractor must provide the post-campaign Media Performance Report to the Customer as part of the services included in the CUA Fee.

e) Verification of Advertising

The Contractor is required to monitor and, on request, verify the appearance and placement of the correct advertising placed in all media. This includes providing the Customer with evidence or through an online digital media dashboard or as agreed with the Customer.

This work is to be conducted on behalf of Customers to substantiate payments made to third party media suppliers. In the event of incorrect or non-appearance of any advertising, the Contractor must immediately report this to the Customer and negotiate adequate compensation with the relevant third party Media Supplier and present this to the Customer for approval. Any resulting negotiation with media outlets will adopt agreed terms and conditions within CUA rate negotiation contracts as their ‘bottom line’ position.

f) Online Booking System

If, as a result of this Request, a Panel Arrangement is formed for Media Booking and Buying, only one of the Contractors may be selected to provide the service of Recruitment, Public Notice and Tender Advertising, in addition to Campaign Advertising.

The Contractor must provide and maintain a secure Online Booking System for delivering services for Recruitment, Public Notice and Tender Advertising.

The system should provide end-to-end management of the advertising process from placing orders, typesetting, media booking, approval of material and media, despatching, invoicing and reporting.
At a minimum, the Online Management System must:

- have pre-approved templates and artwork for the advertising categories other than campaign advertising (Recruitment, Public Notice, and Tender Notice). While Customers will be encouraged to use online booking services as the preferred process, some may choose to use manual transmission methods on occasion;
- have the capacity for proofing, amending and approving all advertisements via a one-step process and with minimal intervention; if the advertisement is rejected, users should be able to provide feedback in the system and indicate required changes;
- have the ability to amend advertisements (booking and building) after approval but before despatch to the media;
- be available to users 24 hours a day, seven days a week, with the exception of agreed scheduled maintenance periods, for the duration of the Contract and the Transition Out Period;
- provide a search functionality that enables easy search and retrieval of documents and files uploaded or deleted; the search functionality must be reference number, advertising type, Customer’s name, contact person and other relevant information; and
- have the ability to create cost estimates and media schedules without submitting a booking or raising a reference number, while maintaining an audit trail of the Contractor’s developed cost estimate.

**g) Online Recruitment Advertising**

If, as a result of this Request, a Panel Arrangement is formed for Media Booking and Buying, only one of the Contractors may be selected to provide the service of Recruitment, Public Notice and Tender Advertising, this includes Online Recruitment Advertising on external job boards.

The WA Government’s online eRecruitment system is a whole of government online solution that provides a central eRecruitment point for WA Public Sector agencies. This system is managed by the Public Sector Commission (PSC). WA Public Authorities use the eRecruitment system to create and publish vacancies, manage applications and recruitment processes. Vacancies created in the eRecruitment system are only posted to the WA Government jobs board (www.jobs.wa.gov.au) or specific agency jobs boards. However capability for Recruitment advertising on other online job boards is required to be done under this CUA. Through consultation with the PSC, online recruitment advertisements will be provided through this CUA for the initial Contract period. All online recruitment advertising to external jobs boards done by Public Authorities will be processed through the new eRecruitment system, rather than through this CUA once the new online eRecruitment system is awarded by PSC. Other CUA approved users will still be able to access this service through the CUA Contractor as an optional service.

During the time that this contract is expected to provide online recruitment advertisements for Public Authorities, the following requirements will apply:

- The Contractor’s online system will need to be able to be integrated with the current eRecruitment solution (provided by Thomson Reuters) to minimise double handling of data and increase efficiencies. A formal project to establish this interface will be scheduled with the preferred Respondent.
h) Media Channels

The Contractor will prepare and implement approved media advertising strategies in the following media channels but not limited to:

- television;
- digital;
- newspaper;
- out of home;
- radio;
- magazines; and
- cinema.

Digital Media advertising can be bought, but not limited to, in the following ways:

- Direct Digital Buying;
- Programmatic Digital Buying; and
- Paid Search.

The ad serving component of digital media campaign advertising is an additional mandatory service provided through the CUA inclusive of uploading. This additional service does not attract a CUA fee and it is represented by a fixed service fee.

i) Sponsored Content

Some Customers may require direct negotiations with third party media suppliers.

The Contractor will negotiate content sponsorships/partnerships with or on behalf of the Customer, where any media buying must be made through the CUA.

All other services must be transparently detailed at the bottom of the media schedule at the negotiated rates, including any related CUA Fee charges.

4.2 Media Strategy and Channel Planning

This service is non-mandatory on this CUA and includes provision of:

a) media strategy plans that include detailed consumer, category, channel and competitive insights along with a recommended channel strategy and reports; and

b) channel plans that detail timings/flightings, channels, media weightings and sizes / lengths with budget allocations.

The Contractor will be required to provide the following general media strategy and channel planning services for all Customers who access the Media Strategy and Channel Planning service:

- timely advice about media channels, deadlines, media specification circulations / readership / site visitor statistics / distribution areas and other media demographics;
- detailed cost estimates and media schedules, where requested; and
- evidence based recommendations to Customers on budget allocations and media selection to ensure cost-efficient and highly effective advertising outcomes.
The Contractor will be responsible for but not limited to:

- developing effective, innovative, integrated media solutions in response to media briefs;
- working proactively with Customers to understand annual activities in order to develop strategies and forward plans to maximise efficiencies;
- participating or leading media sponsorships/partnerships negotiations for specific campaigns;
- fostering continuous improvement through identifying and applying findings from past campaigns; and
- liaising and working productively with creative advertising agencies engaged by the Customers to participate in overarching communications strategy development when required, and ensure effective integration of creative and media strategies.

4.3 Additional Advertising Services

Public Authorities and other CUA approved users, at their discretion, may request the CUA contractors to support the end-to-end delivery of digital media advertising. The Contractor must provide the Customer who has requested Additional Advertising Services with a detailed quotation that includes pricing, hours, deliverables, schedules, risks and any other agreed items for the Additional Advertising Services. These services may be provided through the proposed CUA by the Media Booking and Buying Contractor and/or the Media Strategy and Channel Planning Contractor when required by the Customer.

The Additional Advertising Services are non-mandatory on this CUA, as such these will not attract a CUA Fee. The optional services may include but are not limited to:

- Trafficking/Despatch;
- Search Engine Optimisation (SEO);
- Social Media Management; and
- Research and insights (e.g. competitor analysis, audience segmentation).

Standard media measurements are provided with the Media Booking and Buying activity as part of the CUA Fee. However, for significant campaigns, Public Authorities may require advanced post-campaign research and analysis of the efficacy of advertising strategies.

The Contractor must not provide Additional Advertising Services unless and until the Customer agrees to the Contractor’s quote.

The provision of all Additional Advertising Services by the Contractor must be consistent with relevant government guidelines, policies, customer specific advertising requirements, and, where relevant, instructions from the Contract Authority or Customer.

The Contractor must maintain transparency of charges for Additional Advertising Services throughout the advertising cycle by detailing the cost of these services to the Customer on tax invoices supplied to the Customer and in the reporting provided by the Contractor.
The Additional Advertising Services Charges must be shown at the bottom of the media Plan to ensure the CUA Fee is only applied to the total of the Net Media Cost.

5. GENERAL REQUIREMENTS

5.1 Implementation Plan

Within four weeks from Award of this Contract, the Contractor must present to the satisfaction of the Contract Authority an agreed Implementation Plan that shall give details of:

- strategies to ensure continuity of the Government’s information base so that existing data remains accessible;
- capability and experience of the transition team that will be responsible for achieving full operation at contract commencement;
- strategies to manage handover from any incumbent agencies in a timely and professional manner;
- training, marketing and other initiatives to be undertaken by the Contractor before the Commencement Date, to facilitate the implementation of this Contract as from the Commencement Date; and
- steps to be taken by the Contractor to ensure that it will be in a position to fully perform all of its obligations under this Contract as from the Commencement date.

5.2 Transition Out

If requested by the Contract Authority the Contractor will develop a Transition Out plan that documents how the Contractor will transition the Services to a Successor. This plan will be delivered to the Contract Authority within thirty (30) days of being requested. In this clause the term “Successor” shall mean the person(s) designated by the Contract Authority to undertake requirements identical or similar to this Request’s Scope of Services, in succession to the existing Contractor(s).

Upon receiving notice of termination or non-renewal of the Head Agreement, the Contractor must take all reasonable steps to ensure an orderly and timely transfer of the various contracted tasks and responsibilities to a Successor/s. If requested by the Contract Authority, the Contractor must provide Transition Out services for a period of up to six (6) months prior to the Head Agreement expiring and must negotiate in good faith with the Successor to determine the nature and extent of the transition services required.

The Contractor must provide the Successor, the Customer or a representative nominated by the Contract Authority or Customer, with any information in its possession concerning the operation of the Head Agreement and Customer Contracts that is reasonably requested. Such information may include details of:

- The names and contact points, service providers and Subcontractors;
- The Customer databases;
- Any service arrangements adopted in order to meet the requirements of the new contract arrangement; however the Contractor shall not be required to disclose to the Successor any details of the Contractor’s own ownership or management structure, its level of profit, legal options, preferential supply arrangements, or information received in confidence from third parties; and
• Relevant documentation that may have been provided by Customers.

To the extent requested by the Contract Authority, during the Transition Out period, the Contractor must continue to provide the services specified in the Head Agreement and Customer Contracts, and those services will be provided at the contract rates set in accordance with the provisions of the Head Agreement and Customer Contract. The Contractor must provide experienced personnel during the transition period to ensure that Services called for by the Head Agreement and Customer Contracts are maintained at the required level of proficiency.

5.3 Account Manager

The Contractor will provide an account manager to give the Contract Authority and Customers assistance with setting up accounts and associated services, respond to general enquiries and assist in settling disputes.

The account manager will also be required to meet with the Contract Authority’s representative/s on a regular basis (minimum one hour, monthly meetings) to analyse and discuss contract performance, resolve contract and service matters and develop strategies in consultation with the Contract Authority to maximise the benefits of the CUA.

The Contractor will be required to facilitate these meetings and consult with the Contract Authority or its representative/s to arrange an agenda and take minutes of the meetings.

5.4 Reporting

The Contractor must accurately record and maintain records of all purchases made through the CUA (media usage, rates, fees charged, and general expenditure) regardless of the method of purchase and report these purchases on a regular and as requested basis to meet the requirements of the CUA and the DPC.

The Contractor must maintain a detailed register of credits held by the Contractor or media suppliers on behalf of each Customer and provide these to the Contract Authority or Customer as required.

5.4.1 Quarterly Reporting

Contractors will provide a single MS Excel file every quarter containing the Transactional Data for that quarter to the Contract Authority in the format and manner defined in Appendix A – ‘Reporting Requirements’.

All transactions in the quarterly data file must be exactly those transactions that were invoiced for that quarter.

The quarterly Transactional Data must be provided to the Contract Authority within 20 working days of the end of each quarter i.e. September, December, March and June.

The reporting format proposed in Appendix A – ‘Reporting Requirements’ may be revised during the Term of the Head Agreement, in consultation with the Contractor.

5.4.2 Annual Reporting

Contractors will provide a summary report on an annual basis, to collect information about their estimate of the benefits of participation in terms of generation or retention of employment positions.

The annual reporting must be provided to the Contract Authority within 20 working days of the anniversary of the Contract.
5.4.3 **Ad-hoc Expenditure Reporting**
At any time, the Contract Authority, the DPC or Customers of the CUA, may request from the Contractors specific or ad hoc expenditure reports. The format and timing of these reports is at the absolute discretion of the requestor and must be provided at no cost.

5.5 **Training**
The Contractor, with the Contract Authority’s assistance, will inform and communicate with all Customers and other stakeholders to promote the CUA. This may include provision and distribution of advertising information (e.g. non-confidential media rates).

The Contractor is required to establish ongoing training and engagement programs throughout the duration of the contract to build and strengthen capability amongst customers in the Metropolitan and Regional areas through promotion of best practice and to provide an understanding of the current media landscape. It is anticipated that the Contractor will provide four to six workshops a year. However, the Contract Authority reserves the right to change the level of frequency. Ongoing training and engagement programs should be focussed on but not be limited to:

- innovative ways that will reduce costs but increase the effectiveness of advertising;
- techniques to efficiently and effectively develop advertising briefs;
- market intelligence, and developments and trends in the media industry including new and emerging media;
- inform Customers of detailed media schedule costs, bookings, accounts and billing services for all media placed as required; and
- training and induction programs as an introduction to the online management system.

Each training and engagement program will be agreed to and formally approved by the Contract Authority.

If as a result of this Request a Panel Arrangement is formed for each of the categories, Contractors will be required to work collaboratively with each other and the Contract Authority to avoid duplication in the training content.

The Contractor will be required to keep detailed records of the training programs including a list of attendees and their contact details. A survey must be conducted at the end of each training session on the relevance, effectiveness and presentation. The result of the surveys will be monitored as part of the KPI process.

5.6 **Key Performance Indicators**
The Contractor must comply with, and provide a report on KPIs to Finance as per the requirements detailed in Appendix B ‘Key Performance Indicators (KPIs)’.

5.7 **Invoicing**
The Contractor must provide Tax Invoices to Customers, in arrears, for Advertising Services delivered. Invoices are to be issued at the conclusion of each month and detail the services provided. In general each invoice must include or be accompanied with:

- job reference and/or key number;
• order number or unique Customer identifier;
• service descriptions;
• correct booking information including rates;
• net media spend;
• one invoice for each job including details of any third party fees (subcontractors);
• exchange rate used (for overseas advertising);
• any applicable Fees for Service charges;
• GST;
• clear indication of various cost components (e.g. Service component, media costs, number of hours and hourly rates); and
• the Customer contact name (advertiser) and department name.

The Contractor must maintain transparency of charges for any of the advertising services throughout the advertising cycle by outlining the charges to the Customer, on Tax Invoices supplied to the Customer and in the reporting provided by the Contractor.

The Contract Authority or Customer may, at any time, review the invoices provided to the Contractor by its suppliers to ensure that services provided to Customers are charged at cost.

The Respondent must not charge any fees in relation to providing the services covered by this CUA which have not been identified in the Price Schedule or approved by the Contract Authority.

5.8 Brief
The Customer may develop a Briefing template in order to ensure sufficient detail is provided to the Contractor.

6. SPECIAL CONDITIONS

6.1 Purchasing Card
Respondents are advised that Public Authorities reserve the right to use Purchasing Cards (credit cards) for payments of services under this CUA. Respondents are to ensure availability of merchant facilities to enable payment by Purchasing Card. No additional surcharges above the Offered Price will be allowed for accepting payment by Purchasing Card. Refer to Clause 21.6 of the General Conditions of Contract.

It should be noted that whilst the Purchasing Card is a versatile and efficient tool for low value high volume purchases, Public Authorities have the discretion where practicable to pay for high value transactions using the Purchasing Card.

6.2 Internet Security
When the provision of services under the Head Agreement/Customer Contract are supported by an IT system, the Contractor is required to maintain the adequacy of the security of their online computer system.

Adequate security should address the following:
1. integrity of data – security measures designed to ensure that data transmitted or stored electronically is neither accidentally nor deliberately altered, defaced or lost;

2. confidentiality – the characteristic of data and information being disclosed only to authorised persons, entities and processes;

3. authentication – security measures designed to establish the validity of a transmission, message, or originator or a means of verifying an individual’s eligibility to receive specific categories of information; and

4. availability of service – the characteristic of data, information and information systems being accessible and usable on a timely basis in the required manner.

Technology and management control mechanisms may include but not be limited to the following:

1. antivirus tools;

2. firewalls;

3. back-ups;

4. encryption / SSL;

5. password controls;

6. business continuity plans;

7. electronic IDs; and

8. change controls.

6.3 Monitoring and Auditing

The Contract Authority or Customer shall have the right from time to time at its absolute discretion to audit through using its own internal auditors (and any other means) the performance of the Contractor, pricing, timing of timed transactions and all processes used by the Contractor in the provision of services under this Contract.

The Contract Authority or Customer may commission regular independent media rate audits to substantiate the commercial benefits delivered by the Contractor. Where an audit reveals that any media rates and concessions do not achieve best-in-market rates as identified by the independent media audit, the Contract Authority may direct the Contractor to enter into additional negotiations with the relevant third party media suppliers.

The Contractor shall make available to the Contract Authority and the Contract Authority’s own internal auditors and any other auditor appointed by the Contract Authority all such facilities as may reasonably be required for the proper conduct of any monitoring, auditing or assessing of the operation of this Contract.

6.4 Transparency

The Contractor will notify the Customer in writing at each instance if a recommended Media Supplier is also a holding company member (affiliated, legally or otherwise) and, obtain the Customer’s written approval, on a case-by-case basis, before procuring services from any such holding company member. The Contractor must not procure services from any holding company member if the Customer does not provide its written approval.
6.5 **Conflict of Interest**

The Contractor will not (and will ensure that holding company members do not) enter into any arrangements (whether directly or indirectly) without the Contract Authority or Customer’s approval which would or could lead to any Conflicts of Interest. This includes any consulting, research or other services agreement between the Contractor or a holding company member and a Media Supplier, unless the Customer has authorised such arrangement in writing.

For each Media Plan, the Contractor or its representative must confirm in writing that the Media Plan is free of undisclosed Conflicts of Interest by way of a standard disclosure statement at the base of the Media Plan.

The Contractor must disclose to the Contract Authority or Customer any information that is or might be relevant to determining whether an actual, potential or perceived conflict of interest exists or might exist in relation to the performance of the Contract.

If, during the performance of the Services a Conflict of Interest arises, or appears likely to arise, the Contractor must promptly notify the Contract Authority and any relevant Customer as stated in Clause 30 of the General Conditions of Contract.

6.6 **Data**

Any consumer data collected on behalf of the WA Public Authorities pursuant to this arrangement will remain the property of the Contract Authority or Customer. This includes all media trading information and consumer data generated through digital activities, including first-party and third-party data. Data will be required to be stored in a process as agreed by the Contractor and the Contract Authority or Customer to provide access for analysis, and where relevant (subject to privacy laws etc.), this data may be required to be shared across WA Public Authorities as instructed / necessary.

6.7 **Brand Safety**

The Contractor must use its best efforts to mitigate the risk of advertising appearing alongside inappropriate content in any medium or on any websites known to divert traffic to piracy sites. This needs to also cover the quality of the media in particular in relation to digital i.e. viewability of the ads placed, Ad fraud (i.e. fraudulent bot networks), Brand Safety (i.e. ensuring brands don’t appear on pages that don’t align with Government / Customer’s brands), Ad Clutter (i.e. ensuring ads aren’t placed on media with high levels of brand clutter).

The Contractor and any subcontractors, including those responsible for the placement of programmatic digital advertising, must establish, maintain and review, on an ongoing basis, a Whitelist and Blacklist of websites and apps where advertising may and may not appear. If requested by a Customer, the Contractor must provide the Customer a copy of the Whitelist and Blacklist.

The Contractor will adopt and implement technology and methodologies to track and report to the Contract Authority or Customer accurate Media Placements using accredited third party media suppliers.

7. **EXCLUSIONS**

The following services will be excluded from the proposed CUA. These can be sourced by Customers through individual contract arrangements:
- **Creative Services**: including development of advertising ideas; creative concepts based on strategic directions; design and asset production services; studio and web studio; digital and print production supervision; art direction, retouching and finished art; social media content and review.

- **Print Management Services**: procurement and management of printed products such as forms, brochures newsletters, posters, variable data, reports, banners and other specialty items or marketing materials.

- **Marketing Communication Services**: strategy and brand management including architecture, identity and positioning; marketing opportunities based on consumer trends.

- **Market Research**: services to conduct quantitative and/or qualitative research, market intelligence as well as professional strategic advice to assist in business planning and the design of integrated advertising, promotions and communications services.

- Procurement of advertising space on government-owned assets by Public Authorities, although Government Advertising and Communications Policies and Guideline still require DPC review and approval of these activities prior to producing and material or commencing to advertise.
PART B – CONTENT REQUIREMENT AND RESPONDENT’S OFFER

PART B SHOULD BE COMPLETED BY THE RESPONDENT AND RETURNED TO THE CONTRACT AUTHORITY OR CUSTOMER (REFER ‘SUBMISSION OF OFFER’ REQUIREMENTS OF CLAUSE 2.1 IN THE REQUEST CONDITIONS).

1. NOTE TO RESPONDENT

In preparing its Offer, the Respondent must:

a). address each requirement in the form set out in this Part B;

b). take into account the Head Agreement and Customer Contract requirements, as explained in the Head Agreement and Customer Contract Details. The Respondent must read these in conjunction with the General Conditions;

c). in respect of the Qualitative Requirements in Section 5 in this Part B, provide full details of any claims, statements or examples;

d). assume that the Contract Authority or Customer has no knowledge of the Respondent, its activities, experience or any previous work undertaken by the Respondent for the Contract Authority, Customer or any other Public Authority; and

e). nominate any Offer Information that the Respondent wishes to expressly and reasonably nominate as confidential for the purposes of the Request Conditions.

2. IDENTITY OF RESPONDENT

The Respondent must provide the following details:

<table>
<thead>
<tr>
<th>RESPONDENT TO COMPLETE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Name of Legal Entity:</td>
</tr>
<tr>
<td>(b) ACN (if a company):</td>
</tr>
<tr>
<td>(c) Registered address of Company or address of principal place of business if no registered address:</td>
</tr>
<tr>
<td>(d) Business Name:</td>
</tr>
<tr>
<td>(e) ABN:</td>
</tr>
<tr>
<td>(f) Contact Person:</td>
</tr>
<tr>
<td>(g) Contact Person Position Title:</td>
</tr>
<tr>
<td>(h) Email:</td>
</tr>
<tr>
<td>(i) Telephone:</td>
</tr>
<tr>
<td>(j) Address and email for service of contractual notices:</td>
</tr>
</tbody>
</table>

NB: The Offer does not require the Respondent’s signature.
3. **PRE-QUALIFICATION REQUIREMENTS**
   
   There are no pre-qualification requirements for this Request.

4. **COMPLIANCE AND DISCLOSURE REQUIREMENTS**
   
   The Contract Authority or Customer will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Compliance and Disclosure Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address any of the Compliance and Disclosure Requirements, and/or which contains material departures from the Head Agreement Details, Customer Contract Details and/or General Conditions.

   a). **Compliance**

      (i). **Head Agreement Details**

      The Respondent must confirm whether it will comply with the Head Agreement Details. If the Respondent will not comply with any clause of the Head Agreement Details, the Respondent must set out:

      (A) the clause(s) of the Head Agreement Details it will not comply with;

      (B) the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Head Agreement Details; and

      (C) the reason for non-compliance.

      **RESPONDENT TO COMPLETE:**
      
      Does the Respondent agree to the Head Agreement Details?

      | Yes ☐ | No ☐ |
      |-------|------|
      | If no, provide details: |

      (ii) **Customer Contract**

      The Respondent must confirm whether it will comply with the Customer Contract (excluding the General Conditions and Schedules). If the Respondent will not comply with any clause of the Customer Contract, the Respondent must set out:

      (A) the clause it will not comply with;

      (B) the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the Customer Contract; and

      (C) the reason for non-compliance.

      **RESPONDENT TO COMPLETE:**
      
      Does the Respondent agree to the Customer Contract?

      | Yes ☐ | No ☐ |
      |-------|------|
      | If no, provide details: |
(iii) General Conditions / Schedules

The Respondent must confirm whether it will comply with the General Conditions and Schedules. If the Respondent will not comply with any of the General Conditions and Schedules, the Respondent must set out:

(A) the General Condition / Schedules it will not comply with;
(B) the extent of non-compliance – including the alternative clause, if any, or a description of any changes it requires to the General Conditions / Schedules; and
(C) the reason for non-compliance.

RESPONDENT TO COMPLETE:

Does the Respondent agree to the General Conditions/Schedules?

| Yes ☐ | No ☐ |

If no, provide details:

b). DISCLOSURES

(i) Participants (including subcontractors)

RESPONDENT TO COMPLETE:

Is the Respondent acting as an agent or trustee for another person or persons?

| Yes ☐ | No ☐ |

If yes, provide details:

AND

Is the Respondent acting jointly or in association with another person or persons?

| Yes ☐ | No ☐ |

If yes, provide details:

AND

Has the Respondent engaged, or does the Respondent intend to engage, another person or persons as a subcontractor in connection with the supply of the Services?

| Yes ☐ | No ☐ |

If yes, provide the subcontractor’s details and how you would ensure the subcontractor is able to provide consistent, seamless and quality services to the
WA Government via your organisation. Please include information relating to how you can attest their quality of service.

<table>
<thead>
<tr>
<th>Subcontractor details:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
</tr>
<tr>
<td>ABN</td>
</tr>
<tr>
<td>Contact details</td>
</tr>
<tr>
<td>Scope and extent of services to be provided</td>
</tr>
</tbody>
</table>

(ii) **Criminal Convictions**

The Respondent must confirm that neither the Respondent nor any person included in the Specified Personnel has been convicted of a criminal offence that is punishable by imprisonment or detention.

**RESPONDENT TO COMPLETE:**

Has the Respondent or any person included in the Specified Personnel been convicted of a criminal offence that is punishable by imprisonment or detention?

| Yes ☐ | No ☐ |

If yes, provide details:

(iii) **Conflict of Interest**

The Respondent must declare and provide details of any actual, potential or perceived conflict of interest.

**RESPONDENT TO COMPLETE:**

Does the Respondent have any actual, potential or perceived conflict of interest in relation to the performance of the Customer Contract (if awarded) by the Respondent (including any relevant relationships with other clients, sub-contractors etc.)? Please also detail what steps you will be taking to:

- Identify any conflicts of interest;
- Report on conflicts of interest; and
- Manage conflicts of interest.

| Yes ☐ | No ☐ |

If yes, provide details:

(iv) **Small Business, Australian Disability Enterprise (ADE) and/or Aboriginal Business**

**RESPONDENT TO COMPLETE:**

Respondent is required to disclose whether it is a:

(A) small business that employs less than twenty (20) people; and/or

| Yes ☐ | No ☐ |
(B) registered Australian Disability Enterprise (ADE) – registered means to be listed as an approved ADE on the Australian Disability Enterprises website at: www.ade.org.au/; and/or

| Yes ☐ | No ☐ |

(C) registered Aboriginal Business – the business is to be registered on the Aboriginal Business Directory WA at: http://www.abdwa.com.au/.

| Yes ☐ | No ☐ |

The Respondent should note that its response to this Compliance and Disclosure Requirement:

(A) will be used by the Department of Finance for statistical purposes only; and
(B) will not be used by the Customer in its evaluation of the Offer.

(v) Credit Card/Purchasing Card Payment

RESPONDENT TO COMPLETE:

The use of credit cards/purchasing cards by agencies is actively promoted as a payment method.

The Respondent is required to disclose whether it agrees to receive credit card/purchasing card payment.

Does the Respondent agree to receive credit card/purchasing card payments?

| Yes ☐ | No ☐ |

[Please refer to clause 21.6 of the Request Conditions and General Conditions of Contract for additional information]

(vi) Disclosure of Information between State Revenue and the Contract Authority

(A). Financial Information

The Respondent, or if a body corporate, any director or majority shareholder, is required to consent to the Contract Authority making enquiries with the Western Australian Commissioner of State Revenue or his or her delegates as to the financial details of the Respondent, and to the Western Australian Commissioner of State Revenue or his or her delegates disclosing any tax information to the Contract Authority upon application and for the duration of any contract.

RESPONDENT TO COMPLETE:

Does the Respondent, or if a body corporate, any director or majority shareholder, consent to the Contract Authority making enquiries with the Western Australian Commissioner of State Revenue or his or her delegates as to the financial details of the Respondent, and to the Western Australian Commissioner of State Revenue or his or her delegates disclosing any tax information to the Contract Authority upon application and for the duration of any contract?

| Yes ☐ | No ☐ |

(B). Related Corporations
The Respondent is required to disclose whether it or if a body corporate, any director or majority shareholder has been a director or majority shareholder of a corporation (other than a publicly listed corporation) which has gone into liquidation, receivership, external administration (or anything analogous to any of these) or any such corporation has entered into an arrangement whereby any Commonwealth or State taxes or charges are outstanding or have been written off either in whole or in part.

**RESPONDENT TO COMPLETE:**

Has the Respondent, or if a body corporate any director or majority shareholder of the Respondent, been a director or majority shareholder of a corporation (other than a publicly listed corporation) which has gone into liquidation, receivership, external administration (or anything analogous to any of these) or any such corporation has entered into an arrangement whereby any Commonwealth or State taxes or charges are outstanding or have been written off either in whole or in part?

<table>
<thead>
<tr>
<th>Yes ☐</th>
<th>No ☐</th>
</tr>
</thead>
</table>

If yes:

i. the Respondent must provide details;

ii. the Respondent consents to the Contract Authority making enquiries of the Western Australian Commissioner of State Revenue or his or her delegates, and to the Western Australian Commissioner of State Revenue or his or her delegates disclosing any tax information.

iii. the Respondent, if requested by the Contract Authority, must obtain the written consent of any such director or majority shareholder to the making of any such enquiries and obtaining information. Failure to provide any such consent may in the Contract Authority’s absolute discretion result in the Respondent’s Offer being excluded from further consideration.

**(C). Number of Employees**

The Respondent is required to disclose how many employees it employs, and of those employees what percentage are full-time, part-time and casual.

**RESPONDENT TO COMPLETE:**

How many employees does the respondent employ?

What percentage of these employees are:

i. full time;

ii. part time;

iii. casual.
5. QUALITATIVE REQUIREMENTS

The Contract Authority will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Qualitative Requirements. The Contract Authority reserves the right to reject any Offer that does not properly address and satisfy any of the Qualitative Requirements.

Please indicate the categories of the CUA that you are tendering for:

<table>
<thead>
<tr>
<th>Category</th>
<th>Offered (please indicate “YES” if tendering for)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Media Booking and Buying</td>
</tr>
<tr>
<td>B</td>
<td>Media Strategy and Channel Planning</td>
</tr>
<tr>
<td>C</td>
<td>Additional Advertising Services (must be offered with Cat A and/or B)</td>
</tr>
</tbody>
</table>

If submitting an Offer for Category A, the offered services must include the following types of advertising:

1. Campaign;
2. Recruitment;
3. Public Notice; and
4. Tender Notice

Respondents are only required to submit one tender submission containing relevant information for all categories tendered. Respondents must address all Qualitative Requirements with reference to the offered services. Where information provided is category specific, the Respondent must make this clear to the Evaluation Panel.

In responding to the Qualitative Requirements, the Respondent should note the following:

- The Respondent must address each question under each Qualitative Requirement using the headings provided;
- The Respondent should avoid cross-referencing and address each question in its own right;
- The Respondent should assume that the Evaluation Panel has no knowledge of the Respondent’s organisation, its activities, experience or any previous work undertaken for any organisation or Government Agency; and
- The Respondent should provide full details for any claims, statements or examples used to address the Qualitative Requirements.

The Qualitative Requirements are not weighted equally. Refer to the % weighting (xx% weighting) for each Requirement listed below:

a). SERVICE DELIVERY APPROACH (30% WEIGHTING)

The Respondent must address the following:

(i) Organisational structure: (up to three pages)
(A) Overview of the organisation, its size, ownership, geographical location of its office(s);

(B) How long it has provided the offered service(s) in WA (Metropolitan and Regional areas) and/or in other Australian states.

(C) Details of any services outsourced to other divisions, branches and/or entities. If any services are outsourced or provided by subcontractors, specify these and also the elements of the service that will not be undertaken locally in Perth.

(D) Specify personnel (Account Manager) who will be the primary contact and provide account management for the Contract Authority and Customer in the provision of services including nominated key personnel proposed to support the contract and where they will be based.

(E) Hours of business, including whether a 24 hour service, or other after-hours services, are offered (times to be provided in Perth time, Western Australia).

(ii) Capacity to provide services to WA customers in the Metropolitan and Regional areas: (Up to three pages)

For Category A and B Respondents:

(A) Overview of your experience within the supply of media services, industry knowledge and access to media research data.

(B) Process to ensure that the Key Performance Indicators (KPIs) specified in Appendix B will be met i.e. how your organisation intends to measure and track performance.

(C) Proposed training programs including frequency and support to Customers (Refer to Schedule 2, Section 5.4 Training).

For Category A Respondents:

(D) Capacity to pay the media within the required timeframe to maximise all discounted rates to the customer and deliver further negotiated discounts.

(E) Experience in negotiating Third Party Media rates and to provide an overview of the negotiation process used by your organisation for each medium.

(iii) Systems used to provide the services: (Up to three pages)

For Category A and B Respondents:

(A) List of solutions used for reporting, billing and delivery of services including the building and booking of advertisements (online system).

(B) Processes in place to ensure accurate charging and effective distribution of invoices to Customers.

For Category A Respondents:

(C) Strategies and technology used (or anticipated) to develop, deploy and manage effective programmatic digital buying.

(D) Please outline your company’s approach in reducing fraudulent advertising interference and improving overall advertising visibility.
online and any policy and tools used, including actions taken to ensure brand safety.

(E) Overview of the interface capability with the PSC online recruitment system specified in Schedule 2, Section 4.1 g) Online Recruitment Advertising.

**RESPONDENT TO COMPLETE:**

Respondent to provide the service delivery approach information required under this clause. The Respondent must name the response

**Attachment 5A Service Delivery Approach**

b). **SUPPORTING STRATEGIC OBJECTIVES (30% WEIGHTING)**

The Respondent must address the following:

(i) Outline your company’s approach and systems in maintaining full transparency across all media transactions as well as measures in place to improve pricing transparency and ensure ongoing access for customers to competitive pricing. (Max. 400 words or one page)

(ii) Outline what you anticipate to be the largest media changes over the next three years that would impact the advertising services of the WA Government and processes your agency has in place to foresee and adapt and capitalise on these changes. (Max. 400 words or one page)

(iii) Provide details and strategies of how you propose to develop and maintain a sound relationship with the Contract Authority and Customers of this CUA, including an overview of your organisation’s flexibility and adaptability to changes in customer’s demands including the framework and process for managing such changes. (Max. 400 words or one page)

(iv) Provide details about all the value add services, tools, innovation, information and any other benefits that you will provide the WA Government as part of your media planning and/or buying offer to enhance and optimise campaign development and delivery. (Max. 400 words or one page)

(v) Details of any corporate social responsibility policies including environmental sustainability policies and any community or social initiatives in place. (Max. 400 words or one page)

**RESPONDENT TO COMPLETE:**

Respondent to provide the supporting strategic objectives information required under this clause. The Respondent must name the response

**Attachment 5B Supporting Strategic Objectives**

c). **CATEGORY SPECIFIC EXPERIENCE (40% WEIGHTING)**

The Respondent is to complete this qualitative requirement for each category to which they are submitting an offer for. (Up to five pages for each category)

The Respondent must address the following:

(i) Provide a brief description of the processes involved from end-to-end to deliver the offered services. For Category A Respondents, make specific reference to how your organisation is able to provide the Media Booking
and Buying for each of Campaign, Recruitment, Public Notice, and Tender Notice advertising.

(ii) Provide details of contracts for similar services performed successfully for major clients within the last three years including:
- a detailed description/scope of the services provided (complexity and diversity);
- similarities between the previous contract and this Request;
- when and where the previous contract was performed; and
- the outcome of the previous contract and reasons if the contract has been discontinued.

(iii) Provide a minimum of two [2] referees in respect of the contracts detailed above who can verify its experience in providing the offered services. Referee details must be provided in accordance with the following table:

<table>
<thead>
<tr>
<th>REFEREE DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name and Position Title</td>
</tr>
<tr>
<td>Name of Referee’s Organisation</td>
</tr>
<tr>
<td>Contract Title</td>
</tr>
<tr>
<td>Telephone Number</td>
</tr>
<tr>
<td>Email Address</td>
</tr>
</tbody>
</table>

The referees provided should be willing to be contacted by the Customer to verify the reference information provided. Respondents should confirm this with their reference sites, prior to submitting their Offer. It is not acceptable to state that referees will be provided at a later stage.

(iv) Demonstrate how your organisation is able to provide agency collaboration to share master media rate information, expenditure reporting, campaign learnings and insights. Please provide an example where you have had to collaborate with another media buying or creative agency in a collaborative team environment to deliver the best outcomes.

RESPONDENT TO COMPLETE:

Respondent to provide the category specific experience information required under this clause. The Respondent must name the response Attachment 5C Category Specific Experience
6. HEAD AGREEMENT AND CUSTOMER CONTRACT INSURANCE REQUIREMENTS

HEAD AGREEMENT INSURANCE REQUIREMENTS

The Respondent must demonstrate that it has the insurances required under Schedule 1 - Head Agreement Details.

**RESPONDENT TO COMPLETE:**

Does the Respondent have the insurance required under Schedule 1 - Head Agreement Details?

(Yes / No)

If yes, the Respondent must complete the following table.

<table>
<thead>
<tr>
<th>Insurer</th>
<th>ABN</th>
<th>Policy Number</th>
<th>Insured Amount</th>
<th>Expiry Date</th>
<th>Exclusions, if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>$20 million Public Liability Insurance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers’ Compensation including common law liability of $50 million</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

OR

If no, does the Respondent confirm that prior to being awarded the Head Agreement, they will obtain the insurance policies specified before the Commencement Date?

(Yes / No)

If no, the reasons why: ...................................................................................................................................................
.............................................................................................................................................................................
.............................................................................................................................................................................
.............................................................................................................................................................................
.............................................................................................................................................................................
.............................................................................................................................................................................
**CUSTOMER CONTRACT INSURANCE REQUIREMENTS**

The Respondent must demonstrate that it has the insurances required under Schedule 1 - Customer Contract Details.

### RESPONDENT TO COMPLETE

Does the Respondent have the insurance requirements set out in Schedule 1 - Customer Contract Details?

(Yes / No)

If yes, the Respondent must complete the following table.

<table>
<thead>
<tr>
<th>Insurer</th>
<th>ABN</th>
<th>Policy Number</th>
<th>Insured Amount</th>
<th>Expiry Date</th>
<th>Exclusions, if any</th>
</tr>
</thead>
<tbody>
<tr>
<td>$20 million Public Liability Insurance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$5 million Professional Indemnity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workers’ Compensation including common law liability of $50 million</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**OR**

If no, does the Respondent confirm that prior to being awarded a Contract, they will obtain the insurance policies set out in Schedule 1 - Customer Contract Details before the Commencement Date?

(Yes / No)

If no, the reasons why: ........................................................................................................................................................................................................................................................................................................................................................................
........................................................................................................................................................................................................................................................................................................................................................................................................................................
........................................................................................................................................................................................................................................................................................................................................................................................................................................
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SCHEDULE 3 – PRICING

The Contract Authority or Customer will, in its Value for Money assessment, consider the extent to which the Offer satisfies the following Offered Price and Pricing Requirements. The Contract Authority or Customer reserves the right to reject any Offer that does not properly address and satisfy any of the Offered Price and Pricing Requirements.

a) OFFERED PRICE AND PRICE SCHEDULE

(i) The Respondent must include in the Offer this completed Schedule 3 – Pricing as detailed in the MS Excel document ‘Attachment to Schedule 3 – MBBP2018 Price Schedule’.

(ii) The Respondent must state the basis of its Offered Price in Australian Dollars.

(iii) The Offered Price will be deemed to include the cost of complying with this Request (including the Head Agreement Details, Customer Contract Details and any Addenda available, if any) and the General Conditions and the cost of complying with all matters and things necessary or relevant for the due and proper performance of the Head Agreement and Customer Contract. Any charge not stated as being additional to the Offered Price will not be payable by the Customer.

(iv) If the Offered Price is consideration for a taxable supply under the GST Act, the Offered Price will be deemed to be inclusive of all GST applicable to the taxable supply at the rate in force for the time being.

(v) Quotations must not form part of the Offer. All pricing details must be provided in the Attachment to Schedule 3 – MBBP2018 Price Schedule.xlsx.

CUA Fee: Respondents are required to provide details of the CUA Fee as a fixed percentage (%) of the Net Media Cost.

Maximum Prices: The hourly rates quoted for this CUA will represent maximum prices. Respondents and Customers will also be freely allowed to negotiate lower prices based on volume, value of a service and other circumstances. Respondents are expected to offer more competitive rates than available on the general market.

b) REVIEW OF PRICING

Throughout the contract term pricing can be reviewed by the Contractor and the Contract Authority and reduced to reflect savings either by improved technology, streamlined processes and or discounted pricing strategies.

c) SETTLEMENT DISCOUNT

The Respondent must state whether it is prepared to offer a discount if payment of the Price or that part of the Price specified in the invoice is made within:

(i) seven (7) days;

(ii) fourteen (14) days; or

(iii) twenty-one (21) days,

of the date of the invoice.
RESPONDENT TO COMPLETE:

A discount of:

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within seven (7) days of the date of the invoice;

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within fourteen (14) days of the date of the invoice;

….% is offered if payment of the Price or that part of the Price specified in an invoice is made within twenty-one (21) days of the date of the invoice.
SCHEDULES 4 TO 5 – NOT APPLICABLE

SCHEDULE 4 - UNCONDITIONAL PERFORMANCE GUARANTEE
SCHEDULE 5 - ORDER FORM
SCHEDULE 6 – BUYING RULES

This CUA will be a Pick and Buy arrangement, allowing Customers to purchase services directly with the Contractor. Multiple quotes will not be required. In the case of a Panel arrangement, Customers can reserve the right to choose any Contractor, and can change Contractors at any time during the Term. Customers can also appoint one or more Contractors at any one time on any category of the CUA.

The CUA will be mandatory for all Public Authorities state-wide for buying media within Australia except in the following circumstances:

- for buying media placement overseas, the Customer will first consider using CUA Contractors, but is able to use a Contractor outside of the CUA for overseas buying; and
- for buying media placement on social media and paid search as part of a campaign, the Customer has the option to buy these directly from social media channels or search engines or use the CUA Contractors.
SCHEDULES 7 TO 16 – NOT APPLICABLE

SCHEDULE 7 – PROJECT PLAN
SCHEDULE 8 – SERVICE LEVEL AGREEMENT
SCHEDULE 9 – HARDWARE MAINTENANCE
SCHEDULE 11 – TRANSITION PLAN
SCHEDULE 12 – CHANGE ORDER
SCHEDULE 14 – ESCROW
SCHEDULE 16 – ADDITIONAL DOCUMENTS
APPENDIX A – REPORTING REQUIREMENTS

The reporting requirements to the Contract Authority for the Quarterly Reporting are contained in this Appendix A. Sales Report formats must meet the minimum standards outlined in this document.

1. Report Frequency

Reporting will be on a quarterly basis. The quarterly report will be required to be uploaded onto the supplier portal within 20 days of the end of each quarter i.e. September, December, March and June.

Reporting requirements shall survive termination of this Head Agreement until all Customer Contracts pursuant to this Head Agreement have expired.

2. Report Format

The essential requirements for the format are as follows:

- Flat file format i.e. headings in the first line only;
- Consistent and not changed over time;
- Data fields should have normalised data;
- Data rows show each transactional line; and
- Provided electronically in a *.csv or MS Excel format.

3. Spreadsheets

- Auto filter must not be turned on anywhere within the spreadsheet
- Spreadsheets must not contain data for more than one reporting period; and
- Summaries are not to be included as the first tab on any spreadsheets.

4. Worksheets

- No hidden worksheets;
- No leading or trailing spaces in worksheet names;
- No totals or subtotals;
- No hidden columns;
- No additional columns;
- No merged cells;
- No charts, logos or other embedded objects;
- No strikethrough fonts;
- No formatting;
- No text in numeric fields. (Such as Nil in a quantity or currency ($) field);
- No blanks in numeric fields, use zeroes ('0');
- No currency ($) formatting with a dash, use zeros ('0');
- No drop down lists;
- No dittos or blank fields to represent repeated data, each row must be self-contained;
- A blank cell does not mean the same as the cell above. Repeat information on every row; and
• Information should be in separate columns and not embedded in a description.

5. Columns
• One header row – do not merge cells;
• Each column name is unique;
• Each column must represent one piece of information;
• The column name must not change over time. (It cannot represent a changing value like a month); and
• No hidden columns.

6. Data
• Do not include sub-totals or totals;
• Do not to use abbreviations;
• Dedicate a row (Line) of information for specific service (Do not mix different service data on the same line);
• Quantity columns can’t be blank, use zeros (‘0’) if necessary;
• All Currency fields must be GST Exclusive, unless otherwise specified.
• Use Finance allocated codes – unless otherwise agreed;
• Our preference for the date format is dd/mm/yyyy. If the invoice / statement covers a range of dates, e.g. 1 – 10 November 2017, use only the first date i.e. 01/11/2017
• Our preference for the currency format is ‘0.00’ (2 decimal points); and
• All columns are mandatory unless otherwise indicated.
7. Example of Media Booking & Buying Dataset Format

| A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y |
| Buying Entity | Buyer Name | Buyer Phone Number | Buyer Email | Invoice Number | Invoice Date | Appearance Date | Name of Campaign | Approval Number (GCU) | CUA Category | Type of Advertising | Method of Purchase | Media Type or Channel | Media Outlet | Delivery Area | Type of Additional Services | Number of Hours | Additional Services Cost per unit excl. GST | Total Additional Services Cost excl. GST | Net Media Cost excl. GST | CUA Fee excl. GST | Total GST Amount | Total Cost excl. GST | Government Rate | Published Market Rate excl. GST |
| Department of Health | John Smith | 08-9123-1234 | john.smith@health.wa.gov.au | 262965 | 19/01/2012 | 29/08/2012 | Quit Smoking | 136987 | Booking and Buying | Digital Programmatic | TV | Channel2 | Metropolitan | Ad serving | 0 | 10.50 | 10.50 | 350.00 | 0.00 | 36.05 | 360.50 | 450.00 | 600.00 |
| Road Safety Commission | Jane Williams | 08-9123-5678 | jane.williams@rsc.wa.gov.au | 98874 | 5/06/2012 | 14/08/2012 | Get it Right | 132145 | Booking and Buying | Recruitment | Traditional | Newspaper | The Local | Regional | Complete Artwork | 3 | 15.00 | 45.00 | 120.00 | 0.40 | 17.34 | 173.40 | 250.00 | 400.00 |
| Department of Education | Ava Jones | 08-9444-0547 | ava.jones@education.wa.edu.au | ED1234 | 5/06/2012 | 14/08/2012 | Read More | 132145 | Planning | Campaign | N/A | Planning | Planning Hours | Metropolitan | Media Strategy | 8 | 150.00 | 1200.00 | 0.00 | 0.00 | 120.00 | 1200.00 | 150.00 | 150.00 |

Note: All prices exclude GST

A “Nil Report” is where there has been no business conducted under the CUA for that quarter. A blank sales report with only the header will still need to be submitted.

Example of Nil Report:

| A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y |
| Buying Entity | Buyer Name | Buyer Phone Number | Buyer Email | Invoice Number | Invoice Date | Appearance Date | Name of Campaign | Approval Number (GCU) |

Note: All prices exclude GST

A “Nil Report” is where there has been no business conducted under the CUA for that quarter. A blank sales report with only the header will still need to be submitted.
### 8. Dataset Field Descriptions

<table>
<thead>
<tr>
<th>Excel Column</th>
<th>Field Header</th>
<th>Format</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Buying Entity</td>
<td>Text</td>
<td>Non-abbreviated name of the entity that the order originated from e.g. “Department of Health”</td>
</tr>
<tr>
<td>B</td>
<td>Buyer Name</td>
<td>Text</td>
<td>The person placing the order e.g. “John Smith” (Not the person responsible for paying the invoice)</td>
</tr>
<tr>
<td>C</td>
<td>Buyer Phone Number</td>
<td>Text</td>
<td>The phone number of the person placing the order e.g. “9123-1234”</td>
</tr>
<tr>
<td>D</td>
<td>Buyer Email</td>
<td>Text</td>
<td>The email of the person placing the order e.g. “<a href="mailto:john.smith@health.wa.gov.au">john.smith@health.wa.gov.au</a>”</td>
</tr>
<tr>
<td>E</td>
<td>Invoice Number</td>
<td>Text</td>
<td>Unique Identifier e.g. “D82965”</td>
</tr>
<tr>
<td>F</td>
<td>Invoice Date</td>
<td>Date</td>
<td>The date when the order was placed e.g. “01/01/2012”</td>
</tr>
<tr>
<td>G</td>
<td>Appearance Date</td>
<td>Date</td>
<td>The first date when the campaign airs e.g. “10/02/2012”</td>
</tr>
<tr>
<td>H</td>
<td>Name of Campaign</td>
<td>Text</td>
<td>Non-abbreviated name of campaign and year of campaign e.g. ”Quit Smoking”</td>
</tr>
<tr>
<td>I</td>
<td>Approval Number (GCU)</td>
<td>Text</td>
<td>DPC Government Communications Unit approval number, if applicable (Only Public Authorities) e.g. W1258”</td>
</tr>
<tr>
<td>J</td>
<td>CUA Category</td>
<td>Text</td>
<td>The correspondent CUA Category e.g. Booking and Buying, Planning.</td>
</tr>
<tr>
<td>K</td>
<td>Type of Advertising</td>
<td>Text</td>
<td>Identify the type of advertising e.g. Campaign, Recruitment, Public Notice or Tender Notice</td>
</tr>
<tr>
<td>L</td>
<td>Method of Purchase</td>
<td>Text</td>
<td>Traditional e.g. “Newspaper” or Digital e.g. “Programmatic”</td>
</tr>
<tr>
<td>M</td>
<td>Media Type or Channel</td>
<td>Text</td>
<td>Use standard identifier e.g. “Newspaper” or “Television”, refer below for Finance allocated Media Type or Channel.</td>
</tr>
<tr>
<td>N</td>
<td>Media Outlet</td>
<td>Text</td>
<td>Identify the media used e.g. ”Channel 7”</td>
</tr>
<tr>
<td>O</td>
<td>Delivery Area</td>
<td>Text</td>
<td>Choose from ”Metro”, ”Regional”, ”Interstate” or ”International”</td>
</tr>
<tr>
<td>P</td>
<td>Type of Additional Services</td>
<td>Text</td>
<td>Identify the type of additional service provided to the customer e.g. Social Media Moderation</td>
</tr>
<tr>
<td>Q</td>
<td>Number of hours</td>
<td>Number</td>
<td>The number of hours allocated to a service e.g. planning, lineage, etc.</td>
</tr>
<tr>
<td>R</td>
<td>Additional Services Cost excl GST per unit</td>
<td>Currency</td>
<td>Unit cost per additional service (AUD) excluding GST, e.g. “15.00”. This service does not attract a CUA Fee and it is non-mandatory</td>
</tr>
<tr>
<td>S</td>
<td>Total Additional Services Cost excl GST</td>
<td>Currency</td>
<td>Total of additional services costs (AUD) excluding GST, e.g. “45”. This service does not attract a CUA Fee and it is non-mandatory</td>
</tr>
<tr>
<td>T</td>
<td>Net Media Cost excl GST</td>
<td>Currency</td>
<td>Total of advertising costs (AUD) excluding GST, e.g. “120.00”</td>
</tr>
<tr>
<td>U</td>
<td>CUA Fee excl GST</td>
<td>Currency</td>
<td>The fee, excluding GST for providing this service e.g. “8.40”</td>
</tr>
<tr>
<td>V</td>
<td>Total GST Amount</td>
<td>Currency</td>
<td>The total GST amount (AUD) for the total Net Media e.g. “12.00”</td>
</tr>
<tr>
<td>W</td>
<td>Total Cost excl GST</td>
<td>Currency</td>
<td>Total cost (AUD) for the media excluding GST, CUA fee. e.g. “160.00”</td>
</tr>
<tr>
<td>X</td>
<td>Government Rate</td>
<td>Currency</td>
<td>Pre-Negotiated Government Rate (AUD) in accordance with the CUA annual media rate negotiations, e.g. “50.00”</td>
</tr>
<tr>
<td>Y</td>
<td>Published Market Rate excl GST</td>
<td>Currency</td>
<td>Media cost (AUD) if the service not purchased off CUA, excluding GST e.g. “110.00”</td>
</tr>
</tbody>
</table>
### Finance Allocated Headers

<table>
<thead>
<tr>
<th>Type of Advertising</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruitment</td>
<td></td>
</tr>
<tr>
<td>Public Notice</td>
<td></td>
</tr>
<tr>
<td>Tender Notice</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Method of Purchase</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Traditional</td>
<td></td>
</tr>
<tr>
<td>Direct Digital Buying</td>
<td></td>
</tr>
<tr>
<td>Programmatic Digital Buying</td>
<td></td>
</tr>
<tr>
<td>Paid Search</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Media Type or Channel</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Television</td>
<td></td>
</tr>
<tr>
<td>Digital</td>
<td></td>
</tr>
<tr>
<td>Newspaper</td>
<td></td>
</tr>
<tr>
<td>Out of home</td>
<td></td>
</tr>
<tr>
<td>Radio</td>
<td></td>
</tr>
<tr>
<td>Magazines</td>
<td></td>
</tr>
<tr>
<td>Cinema</td>
<td></td>
</tr>
</tbody>
</table>

**Note:**
- The newspaper category includes newspaper insert magazines
- The out of home category includes signage and outdoor advertisements, shopping centres, office towers and cafes.
- Digital includes internet and mobile phone campaigns
Delivery Area

<table>
<thead>
<tr>
<th>Metropolitan</th>
<th>Regional</th>
<th>Interstate</th>
<th>International</th>
</tr>
</thead>
</table>

Note:
- Delivery area relates to the location of the media outlet
- The delivery area for the West Australian is “Metro”
- The delivery area for the Australian is “Interstate”

Finance Allocated Headers – Additional Advertising Services

<table>
<thead>
<tr>
<th>Category Code</th>
<th>Category Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BM</td>
<td>Build and Book Mono by the customer</td>
</tr>
<tr>
<td>BC</td>
<td>Build and Book Colour by the customer</td>
</tr>
<tr>
<td>CM</td>
<td>Build and Book Mono by the Contractor</td>
</tr>
<tr>
<td>CC</td>
<td>Build and Book Colour by the Contractor</td>
</tr>
<tr>
<td>CAM</td>
<td>Complete Artwork Mono</td>
</tr>
<tr>
<td>CAC</td>
<td>Complete Artwork Colour</td>
</tr>
<tr>
<td>TD</td>
<td>Advertising templates digitalisation</td>
</tr>
<tr>
<td>LG</td>
<td>Lineage</td>
</tr>
</tbody>
</table>

Additional Services:
- TD Trafficking/Despatch
- SEO Search Engine Optimisation (SEO)
- SMM Social Media Management
- RAI Research and Insights

These services may be provided through the proposed CUA as required and will be non-mandatory, as such these will not attract a CUA Fee. Any other additional service must be approved by the Contract Authority.
APPENDIX B – KEY PERFORMANCE INDICATORS (KPIs)

Proposed measures to evaluate the contractors’ performance against the KPIs include:

1. Customer satisfaction survey. This takes place once (occasionally twice) a contract term, mostly at the point of contract review. This survey is executed by an external research provider and has approximately 15 questions. CUA users are interviewed by phone. Questions are fairly general and focus on customer satisfaction, value for money, timeliness of service, etc.

2. Annual contract manager survey. The contract manager prepares an online questionnaire and distributes this to CUA users. There is scope for more in-depth questioning.

3. Quarterly checks of accuracy of sales reports, spot checks of invoices and media plans.

KPIs are adjustable by the Department of Finance throughout the course of the contract.

The contractor will deliver timely and innovative services of high quality and suitability, as per the following KPIs:

<table>
<thead>
<tr>
<th>Key Performance Indicators (KPI)</th>
<th>KPI outcome statement</th>
<th>Measures</th>
<th>Target</th>
<th>Reporting Frequency</th>
</tr>
</thead>
</table>
| Media booking and buying        | The contractor costs and implements media plans that are timely, accurate and transparent. | • Customer Satisfaction Survey at contract review  
• Annual contract management survey  
• Ensure the cost of the services meets, or is less than, the final agreed price (spot check)  
• Total of invoice(s) for the Advertising Services provided compared to the finalised quote (spot check). | 90% customer satisfaction  
90% customer satisfaction  
100% of spot checks  
100% of spot checks | At contract review  
Annual  
Quarterly  
Quarterly |
### Appendix B

<table>
<thead>
<tr>
<th>The contractor achieves rates lower than pre-negotiated rates when buying and booking media for campaign advertising.</th>
<th>• Quarterly sales report</th>
<th>100% of lower rates</th>
<th>Quarterly</th>
</tr>
</thead>
</table>

| The contractor negotiates best-in-market annual ceiling rates for government, in a timely fashion. | • Ratecards sent within two weeks of endorsement of negotiations by Department of Finance.  
• Summary of rate negotiations outcomes including savings to government compared to the previous year.  
• Complete rate negotiations prior to expiry of the current rates | Within 2 weeks  
Annual savings to government to improve year on year  
100% on time | Annual  
Biennial |
|---|---|---|---|

| The contractor delivers timely and comprehensive Media Performance Reports that include learnings and recommendations. | • Customer Satisfaction Survey at contract review  
• Annual contract management survey | 90% customer satisfaction  
90% customer satisfaction | At review  
Annual |
|---|---|---|---|

### Media Strategy and Channel Planning

| The contractor works closely with the customer to understand and fine-tune requirements, and seeks to find innovative media solutions in line with the evolving media landscape. | • Customer Satisfaction Survey at contract review  
• Annual contract management survey | 90% customer satisfaction  
90% customer satisfaction | At contract review  
Annual |
<table>
<thead>
<tr>
<th>Timely delivery of well-researched and substantiated media strategies that are reflective of the target audience’s media preferences.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customer Satisfaction Survey at contract review. Annual contract management survey</td>
</tr>
<tr>
<td>90% customer satisfaction. 90% customer satisfaction</td>
</tr>
<tr>
<td>At contract review. Annual</td>
</tr>
</tbody>
</table>

**Training**

<table>
<thead>
<tr>
<th>The contractor facilitates between four and six training and engagement sessions per year, adding value through improving clients’ skills and knowledge, resulting in improved decision making and processes. Sessions to have the purpose of informing, rather than selling. Sessions to cover media-related topics, including new media.</th>
</tr>
</thead>
</table>
| • Number of workshops, training and seminars provided to all CUA approved users. 
• Annual contract management survey |
| 4 to 6 workshops 
90% customer satisfaction |
| Contract anniversary. Annual |

**Invoicing**

<table>
<thead>
<tr>
<th>The contractor will prepare timely, transparent, accurate and complete invoices.</th>
</tr>
</thead>
</table>
| • Sufficiently detailed invoice(s) issued within five working days of the services provided. 
• As measured in spot checks of invoices. |
<p>| 100% |
| Quarterly |</p>
<table>
<thead>
<tr>
<th>Reporting</th>
</tr>
</thead>
<tbody>
<tr>
<td>The contractor delivers reports that are accurate, timely, of high quality and with no substantive errors.</td>
</tr>
<tr>
<td>• The accuracy, quality and timeliness of all reports to be submitted by the Contractor will be assessed and monitored by the Department of Finance in accordance with the following criteria:</td>
</tr>
<tr>
<td>o accuracy - no substantive errors in report content</td>
</tr>
<tr>
<td>o timeliness - submitted on time (quarterly within 20 days of the quarter ending)</td>
</tr>
<tr>
<td>o quality - is consistent with the requirements of the Contract and any templates issued by the Department of Finance. Documents must be consistent in format, layout and design.</td>
</tr>
<tr>
<td>o Substantive means no errors that have a material impact on conclusions, recommendations or decisions.</td>
</tr>
<tr>
<td>o Timeliness for receiving ad-hoc and urgent information and reporting requests by Department of Finance and DPC.</td>
</tr>
<tr>
<td>100%</td>
</tr>
</tbody>
</table>
APPENDIX C – MEDIA RATE NEGOTIATION PROCESS

1. ANNUAL MEDIA RATE NEGOTIATION PROCESS

A CUA Contractor may be selected to assist the Contract Authority in the media rate negotiation process.

The following section provides an outline of the essential components of the process to be followed by Contractors, which may be varied during the term of the Contract at the discretion of the Contract Authority. The final rate negotiation methodology will be documented as agreed with the nominated Contractor.

1.1. Contractors submit net media expenditure reports to the Contract Authority or its nominated representative within seven (7) days of this being requested.

1.2. Issues with print media outlets and any concerns about the rates, including those from clients, must be submitted at the same time as item 1.1 to assist in the rate negotiation process.

1.3. The Contract Authority and/or its nominated representative will consolidate the expenditure reports from each of the Contractors.

1.4. The Contractor nominated by the Contract Authority will initiate the negotiation and shall invite the Third Party Media Suppliers to submit their media rate proposal for consideration. A representative from the Department of Finance and/or the Department of the Premier and Cabinet (DPC) will assist or lead the negotiations.

1.5. The Contractor will provide the Contract Authority and its nominated representative with market trends in relation to media rates and assist with negotiation strategies as required.

1.6. The nominated Contractor shall be responsible for coordinating and hosting meetings with Third Party Media Suppliers attending the media negotiations. The Contract Authority and its nominated representative are required to be in attendance at all negotiation meetings with Third Party Media Suppliers.

1.7. It is expected that the nominated Contractor will have undertaken the appropriate analysis of all data such as but not limited to, expenditure (current and historical), price comparisons of Third Party Media Suppliers existing and proposed media rates, trends, commercial costs (rack rates). Analysis shall also include a summary of benefits for the medium overall and issues that may impact negotiations with a view to positioning the Contract Authority to gain the most beneficial media rate outcomes.

1.8. Once the negotiations are complete, the nominated Contractor must document the proposed agreements with each Media Supplier, for written endorsement by the Contract Authority and/or its nominated representative.

1.9. The nominated Contractor must then formalise the endorsed agreements and provide copies to the Contract Authority and/or its nominated representative. In addition, the Contractor must provide an executive overview of the negotiation process and its outcomes, supported by a table showing each media outlet’s expenditure, the agreed percentage of their annual media rate increase/decrease and the subsequent savings/cost to government when compared to their market rate increases;

1.10. A consolidated document of the final approved Third Party Media Supplier rate cards must be distributed to the Contract Authority, its nominated representative and other Contracted Suppliers.